

Supplement

TO

PIERCE'S WASHINGTON CODE, 1912

ANNOTATED

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COMPILED BY

FRANK PIERCE

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ARTICLE I.

§32a. **Recall of Officers.** §33. Every elective public officer in the State of Washington except judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. (Adopted, November, 1912.)

§32b. **Procedure.** §34. The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: Provided, That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of law-making nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. (Adopted, November, 1912.)

ARTICLE II.

§33. **Legislature—Reserved Powers.** §1. The legislative authority of the State of Washington shall be vested in the legislature, consisting of a senate

(RECAP)

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and house of representatives, which shall be called the legislature of the State of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature.

Initiative: (a) The first power reserved by the people is the initiative. Ten per centum, but in no case more than fifty thousand, of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measure shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

Referendum: (b) The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted. Six per centum, but in no case more than thirty thousand, of the legal voters shall be required to sign and make a valid referendum petition.

When Laws Take Effect. (c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.

Petition—Vote—Publicity. (d) The filing of a referendum petition against one or more items, sections or parts of any act, law or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filed with the secretary of state not later than ninety days after the final adjournment of the

session of the legislature which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular elections, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon: Provided, That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the State of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. The whole number of electors who voted for governor at the regular gubernatorial election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation. The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the constitution referred to the people with arguments for and against the laws and amendments so referred, so that each voter of the state shall receive the publication at least fifty days before the election at which they are to be voted upon. (Adopted, November, 1912.)

1 §33.

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1 §51.

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1 §58.

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1 §60.

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1 §69.

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1 §100.

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1 §101.

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1 §108.

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1 §111.

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1 §112.

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Infamous crime under the laws of this state, *State v. Collins*, 69 W. 268.

An information for false swearing in registering must allege loss of his right to vote in the state where convicted, *State v. Collins*, 69 W. 268. 1 §137.

It is a violation of Const. Art. 2, §7, to assess all property save bank stock on a 40 per cent valuation, and to assess bank stock on a 60 per cent valuation, *Spokane Trust Co. v. Spokane County*, 70 W. 48.

Exempt where title vests before levy, *State v. Snohomish County*, 71 W. 1 §144.

Section is limitation on cities not counties, *Bilger v. State*, 63 W. 457. 1 §146.

Capitol buildings are not within this section, *State Capitol Com'n. v. Board*, 74 W. 1 §150.

Does not apply to obligations which are mandatory by constitution and laws, but building docks, installing lights, etc., are not ordinarily mandatory *Patterson v. Edmonds*, 72 W.

Indebtedness incurred in the necessary conduct of a city's ordinary affairs is not limited, *Pilling v. Everett*, 67 W. 109. 1 §167.

County commissioners are not county officers when equalizing local assessments, *Bilger v. State*, 63 W. 457.

Salaried county clerks must turn over half of naturalization fees allowed by fed-

eral law, *Franklin County v. Barnes*, 68 W. 488.

Other methods of amendment may be adopted, *State ex Hindley v. Court*, 70 W. 352.

Const. Art 11 §10 permits mandamus to compel initiative election, *State ex rel. Hindley v. Court*, 70 W. 357.

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Commission form of government is classification—election, *State ex Hunt v. Tausick*, 64 W. 69. 1 §174.

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Does not prohibit condemnation of lands, *Roberts v. Seattle*, 63 W. 573.

Grant of sections 16 and 36 is compact with state and not affected by later act, *State v. Whitney*, 66 W. 473.

ARTICLE XVI.

§211. Investment of the Permanent School Fund. §5. None of the permanent school fund of this State shall ever be loaned to private persons or corporations; but it may be invested in national, state, county, municipal or school district bonds. (Adopted November, 1894.)

1 §211.

Fund cannot be invested in capitol building bonds, *State Capitol Com'n v. Board*, 74 W.

1 §212.

Waters of stream not navigable may be diverted by power company, *Sumner Lumber Co. v. Pacific Coast P. Co.*, 72 or 73 W.

Grantee of U. S. has no riparian rights—Lake Washington shore owners, *Bilger v. State*, 63 W. 457.

Owner of upland on inland lake has no rights to water for irrigation superior to the right of appropriation of non-adjacent owners, *State ex rel. Ham v. Court*, 70 W. 442.

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1 §213.

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Lands may be taken for reservoir site, *State ex. Golden Val. etc. Co. v. Court*, 67 W. 556.

TITLE 9—AGRICULTURE.

9 §53.

lice power, *Wedemeyer v. Crouch*, 68 W. 14.

Act constitutional, being within the po-

AN ACT to prevent the spreading of noxious weeds, relating to the duties of owners, lessees, mortgagees, occupiers and agents of lands and of district road supervisors, prosecuting attorneys, county commissioners, county auditors, county treasurers and superior courts, providing a penalty for the violation thereof, providing for appeals to the superior court and supreme court, and amending sections 3038, 3039, 3040, 3041 of Remington & Ballinger's Annotated Codes and Statutes of Washington, as amended by chapter 60 of the Session Laws of 1911, and section 3042 of Remington & Ballinger's Annotated Codes and Statutes of Washington.

Approved March 18, 1913. Laws '13, ch. 106.

9 §71. **Person in Charge to Destroy Weeds.** §1. It shall be the duty of every owner, lessee, occupant or agent thereof, or of any person having the care and charge of any land or lands, improved or unimproved, enclosed or unenclosed, in this state, to cut down or otherwise destroy all noxious weeds growing thereon or on any road, street or highway to the center thereof bordering on any such land or lands, so often in each and every year as shall be certain to prevent them from going to seed: Provided, That this shall not apply to timber lands, brush lands or logged-off lands. R&B §3038.

9 §73. **Penalty.** §2. If any owner, lessee, occupant, agent or person having the care or charge of any such land or lands shall knowingly suffer any noxious weeds to grow thereon, and shall permit the seeds of any such noxious weeds to ripen, he shall be guilty of a misdemeanor: Provided, That this section shall not apply to what is commonly known as "bull thistle," on lands known as "logged-off, or cut over lands" outside of cities and towns. R&B §3039.

9 §75. **Duty of County Officers—Railroads.** §3. It shall be the duty of each road supervisor in each road district in this state to see that the provisions of this act are carried out within his district, and he shall file with the prosecuting attorney of the county lists of lands within his district upon which any noxious weeds may be growing, giving a description of the kinds and character of weeds growing thereon, together with a statement of the approximate time within which said weeds must be destroyed in order to prevent their going to seed.

Upon receipt of such lists it shall be the duty of the prosecuting attorney to demand from the county auditor and county treasurer lists giving the names of any and all owners, lessees, mortgagees and occupants of the lands to be affected, together with their places of residence or address so far as may be shown by the public records of said county or of said offices or be known to said officers, and it shall be the duty of said auditor and said treasurer to furnish such information.

It shall be the duty of such prosecuting attorney to issue and subscribe notices directed to each and all of said owners, lessees, mortgagees and occupants which said notices shall require the persons therein named to cause said noxious weeds to be cut down and destroyed within ten days from the time of serving, mailing or posting said notices as in this act provided and said notices shall be served or given in the following manner: On all residents of the county within which the lands affected are situated, by serving the same personally in the same manner as provided by law for the service of a summons in the superior court; on all non-residents of the county whose address or place of residence is shown by the records or is known, by mailing a copy of said notice by registered mail; and in all cases where the address or place of residence is unknown, by posting a copy of said notice in a conspicuous place on the land and in full view of the traveling public. In case of a return of not found as to any of such persons whose address or place of residence is unknown, posting of the notices as herein provided shall be a sufficient service thereof.

It shall be the duty of the county auditor to keep a record book in which he shall cause to be entered the names, addresses or places of residence of

any person, firm or corporation who may notify such officer of their desire to be registered therein and of their desire to be notified by registered mail at the place of residence or address given of any proceedings had under this act affecting any lands of which they may be the owners, lessees, mortgagees or occupants; and the sending by registered mail of any notice or statement provided for under this act to said person or persons, firm or corporation at the place of residence or address given shall constitute a sufficient service under this act.

All returns of not found shall be made by the sheriff of the county or his deputies, and all returns not found, proofs of service, mailing or posting shall be filed forthwith in the office of the auditor of the county where the land is situated.

Where noxious weeds are growing on the right-of-way of any railroad within any road district, said notice may be served on the foreman in charge of that portion of the right-of-way passing through such district, or such notice may be served on such railway corporation by delivering a copy thereof to any agent of said corporation within the state personally.

In case the persons named in said notice fail, refuse or neglect to cut down and destroy said noxious weeds within ten days after the date of serving, mailing or posting said notices as in this act provided, then such road supervisor shall take the necessary assistance and enter upon said lands and cause said noxious weeds to be destroyed with as little damage to growing crops as may be.

If any such road supervisor shall fail or refuse to perform or cause to be performed any of the duties or services enumerated in this act, he shall be deemed guilty of a misdemeanor. R&B §3040.

9 §77. **Owner's Expense.** §4. Each road supervisor shall keep an accurate account of the expenses incurred by him in carrying out the provisions of this act with respect to each parcel of land entered upon therefor and the prosecuting attorney of the county shall cause to be served, mailed or posted in the same manner as is provided in this act for giving notice to destroy noxious weeds a statement of such expense, including description of the land verified by oath of the road supervisor, to the owner, lessee, mortgagee, occupant or agent or person having charge of said land, and coupled with such statement shall be a notice subscribed by said prosecuting attorney and naming a time and place when and where said matter will be brought before the board of county commissioners for hearing and determination, said statement and notice to be served, mailed or posted, as the case may be, at least ten days before the time for such hearing. At the time of such hearing or at such other time to which the same may be continued or adjourned by said county commissioners, the board shall proceed to examine said claim, hear testimony if offered and shall make and enter an order upon the minutes of said meeting that said claim, or so much thereof as shall be deemed just and proper, shall be paid out of the road and bridge fund of said county. Costs of serving, mailing and posting shall be added to any amount so found to be due and shall be collected at the same time and in the same manner as other charges under this act. R&B §3041.

9 §79. **Expense Levied as Tax.** §5. At the time when the board of county commissioners pays the claim for cutting said weeds as in section 4 provided it shall make an order that the amount paid be a tax on the land on which said work was done after the expiration of ten days from the date of the entry of said order, unless an appeal be taken as in this act provided in which event the same shall become a tax at the time the amount to be paid shall be determined by the court, and the county treasurer shall enter the same on the tax rolls against the land for the current year and collect it together with penalty and interest as other taxes are collected, and when so collected, the same shall be credited to the county road and bridge fund: Provided, That a failure to serve, mail or post any of the notices or statements provided for in this act shall not invalidate said tax but in case of such failure, the lien of such tax shall be subordinate and inferior to the interests of any mortgagee to whom notice has not been given in accordance with the provisions of this act. R&B §3042.

9 §80. **Appeals to Superior Court.** §6. Any interested party may appeal from the decision and order of said county commissioners to the superior court of said county by serving written notice of appeal on the county auditor and by filing in the office of the clerk of the superior court a copy of said notice of appeal with proof of service attached, together with a good and sufficient cost bond in the sum of \$200.00, said cost bond to run to the county and in all other respects to comply with the laws relating to cost bonds required of non-resident plaintiffs in the superior court. Said notice of appeal must be served and filed within ten days from the date of the decision and order of the county commissioners and said cost bond must be filed within five days from the filing of said notice of appeal.

Whenever notice of appeal and cost bond shall have been filed with the clerk of the superior court, that officer shall notify the county auditor thereof forthwith and the auditor shall certify immediately to said court all notices and records in said matter, together with proofs of service, and a true copy of the order and decision pertaining thereto made by the county commissioners. If no appeal be perfected within ten days from the decision and order of the county commissioners the same shall be deemed confirmed and the auditor shall certify the amount of such charges to the county treasurer who shall enter same on the tax rolls against the land; when an appeal is perfected the matter shall be heard in the superior court de novo and the court's decision shall be conclusive on all persons properly served under this act: Provided, That an appeal may be taken to the supreme court from the order or decision of the superior court in the manner provided by existing laws, and upon the conclusion of such appeals the amount of charges and costs adjudged to be paid shall be certified by the clerk of the superior court to the county treasurer and said treasurer shall proceed to enter the same on his rolls against the land affected.

9 §80a. **Excepting Territory.** §7. The board of county commissioners of any county in this state shall have the power to designate by an order, to be made and entered in the manner hereinafter, certain territory which may be excepted from the provisions of this act. Whenever a petition signed by ten or more residents of any road district shall be filed with the county auditor praying that certain contiguous territory therein bounded and described and lying wholly within said road district be excepted from the provisions of this act for the reasons set forth in said petition, said auditor shall cause a notice to be published for two successive weeks in the newspaper doing the county printing, which said notice shall set forth the boundaries of the tracts to be excepted and shall name the time and place for a hearing by the board of county commissioners on said petition, the first publication of said notice to be at least fifteen days prior to the time of said hearing: Provided, That the person or persons filing said petition shall pay in advance to the county auditor the costs of the publication of such notice.

At the time of said hearing the board of county commissioners shall hear all persons interested in the matter presented by said petition and, by an order made and entered in the record of their proceedings, shall determine whether said territory shall be excepted from the provisions of this act, giving the reasons for their decision, and in case the prayer of such petition is granted such order shall describe the boundaries of the territory within said road district to which such exception shall be applied: Provided, That any order thus made excepting any territory from the provisions of this act shall not be in force for a longer period than twelve months from the date of the entry of such order, unless a new petition be filed, new notice given and another hearing be had as in this act provided.

AN ACT creating a department of agriculture, providing for the organization and administration thereof, defining the powers and duties of its officers and employees in relation to agriculture, horticulture, live stock, dairying, state fairs, foods, drinks, drugs, oils, and other kindred subjects, providing penalties for the violation thereof, and repealing certain acts and parts of act. Approved March, 11, 1913. Laws '13. ch. 60.

9 §91. **Department Created.** §1. There shall be a department of the state government known as the Department of Agriculture, which shall be charged with the administration of the laws relating to agriculture, agricultural resources and products, horticulture, live stock, foods, drugs and oils, and such other subjects as the legislature may provide.

9 §93. **Commissioner—Appointment.** §2. The office of commissioner of agriculture is hereby created. The governor shall appoint the commissioner of agriculture, and such commissioner shall hold office at the pleasure of the governor and until his successor is appointed and qualified. The commissioner shall be ex-officio a member of the state board of health.

9 §95. **Oath—Bond—Office.** §3. Before entering upon the duties of his office the commissioner of agriculture shall take and subscribe the oath of office required of state officers, and shall give a surety company bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state. The commissioner shall receive an annual salary of four thousand dollars, payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily incurred in the performance of his duties. He shall maintain his office at the state capitol.

9 §97. **Advisory Board.** §4. An agricultural advisory board is hereby created, which shall consist of the governor, the commissioner of agriculture, the director of the Washington agricultural experiment station of the State College of Washington, and two other members who shall be appointed by the governor and serve at his pleasure. The governor shall be ex-officio chairman of the board, and the commissioner of agriculture shall be ex-officio secretary. The members of the board shall serve without compensation, but shall be allowed their actual and necessary expenses incurred in the performance of their duties. It shall be the duty of the agricultural advisory board to meet at the call of the governor, and it shall advise the commissioner of agriculture in such matters as pertain to the administration of the department.

9 §99. **Divisions of Department.** §5. For the purpose of administering the affairs of the department of agriculture it shall be organized into four divisions, to be known respectively as the division of dairy and live stock, the division of horticulture, the division of agriculture and the division of foods, feeds, fertilizers, drugs and oils.

9 §101. **Commissioner's Powers.** §6. The commissioner shall have power and it shall be his duty:

1. To exercise all the powers and perform all the duties now vested in and required to be performed by the state veterinarian.

2. To exercise all the powers and perform all the duties now vested in and required to be performed by the state dairy and food commissioner.

3. To exercise all the powers and perform all the duties now vested in and required to be performed by the state commissioner of horticulture and the district horticultural inspectors appointed by such commissioner.

4. To exercise all the powers and perform all the duties now vested in and required to be performed by the state oil inspector.

5. To exercise all the powers and perform all the duties now vested in and required to be performed by the state fair commission.

6. To exercise all the powers and perform all the duties now vested in and required to be performed by the Southwest Washington Fair Commission.

7. To exercise all the powers and perform all the duties now vested in and required to be performed by the state commissioner of labor so far as they concern the inspection and supervision of bakeries and bakeshops.

8. To exercise all the powers and perform all the duties now vested in and required to be performed by the department of animal husbandry in the State College of Washington in respect to the registry and licensing of stallions and jacks.

9. To exercise all the powers and perform all the duties now vested in and required to be performed by the director of the Washington agricultural experiment station in respect to concentrated commercial feeding stuffs.

10. To exercise all the powers and perform all the duties now vested in and required to be performed by the director and chemist at the Washington agricultural experiment station, or either of them, in respect to commercial fertilizers used for manurial purposes.

11. To publish and distribute bulletins and reports embodying information upon the subjects of agriculture, horticulture, live stock, dairying, foods and drugs and other matters pertaining to his department.

12. To cause surveys and classifications to be made of such lands as shall come within any project of the state for reclamation, drainage or utilization of logged-off lands, or other similar enterprises.

13. To make a report to the governor, at least thirty days before the commencement of each biennial session of the Legislature, containing an account of all matters pertaining to his department and its administration, which shall be printed and published in the manner provided by law.

9 §103. **Assistants—Bond—Examination.** §7. The commissioner of agriculture may appoint such assistants, inspectors, experts and other employes as may be necessary for the administration of the affairs of the department, at such rates of compensation as the advisory board may determine upon. The commissioner may require any assistant, inspector or other employe to give a surety bond to the State of Washington in such sum and with such conditions as he shall determine, the premium on such bond to be paid by the state. He shall before appointing any assistant or inspector require him to take an examination on such subject or subjects as shall pertain to the performance of his duties; but he may appoint without examination any person who is a graduate of the State College of Washington in such subject, or who is a graduate of any recognized school maintaining a course of instruction in such subject equivalent to the course prescribed at the State College of Washington therein.

9 §105. **Assignment of Assistants—Powers.** §8. The commissioner of agriculture shall designate the division of the department to which any assistant or inspector appointed by him shall be assigned. An assistant or inspector may be assigned to more than one division. Any assistant or inspector assigned to any division shall, subject to the supervisory control of the commissioner, possess and exercise the same powers and perform the same duties as the commissioner of agriculture, with respect to all matters within such division.

9 §107. **Appeals.** §9. Any person aggrieved by any finding, order or act of any assistant or inspector in the department of agriculture may appeal from such finding, order or act to the commissioner, who shall forthwith proceed to hear and determine such appeal, render his decision therein, and report the same to the appellant and to such assistant or inspector. Such decision shall specify the further proceedings to be had in the premises. Such decision shall not, however, preclude an appeal or proper action in the courts in cases where such rights would otherwise exist.

9 §109. **Officers Not to Be Interested—Penalty.** §10. It shall be unlawful for the commissioner, or any assistant, inspector, or other employe, to be interested, directly or indirectly, either as owner, agent or solicitor, in the sale or purchase of any article, commodity or product used or produced by any person with whom he may come in contact in his official capacity. Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

9 §111. **Chemists.** §11. The chemist of the Washington agricultural experiment station and the dean of the department of chemistry of the University of Washington shall be the chemists of the department of agriculture, and it shall be the duty of such chemists or either of them, without compensation other than their expenses necessarily incurred in the performance of such work, to analyze any and all substances that the commissioner of agriculture, his deputies or inspectors may send to them, and report to the commissioner, without unnecessary delay, the result of any analysis so made, and when called upon by said commissioner any such chemist shall assist, as an expert or otherwise, in any prosecution for the violation of any law pertaining to the department.

9 §113. **Fees Collected—Audit of Expenses.** §12. All moneys collected as fees or otherwise by the department of agriculture shall be paid into the state general fund. All expenses incurred under the provisions of this act shall be paid out of the general fund, and shall be audited by the state auditor upon proper vouchers approved by the commissioner of agriculture; and the state auditor shall draw warrants upon the state treasurer for the amounts thus audited, in the manner provided by law.

9 §115. **Horticulture Fund Transferred.** §13. Upon the taking effect of this act all moneys in the state horticultural fund shall be transferred to the state general fund, and all moneys thereafter collected which shall be payable into the state horticultural fund shall be paid into the state general fund.

9 §117. **Repeals.** §14. All acts and parts of acts incorporated in the following schedule, and all acts and parts of acts in conflict with the provisions hereof, are hereby repealed.

Rem. & Bal. Code Repealed. Schedule. Sections 3003, 3004, 3015, 3016, 3022, 3069, 3070, 3071, 3072, 3073, 3074, 3076, 3077, 3078, 3079, 3081, 3082, 3111, 3112, 3114, 3118, 3121, 3128, 3129, 3130, 3132, 3133, 3202, 3217, 3218 5444a, 5444b, 5444c, 5444d, 5445, 5445a, 5445b, 5445c, 5445d, 5448f, 5448g, 5448k, 5448m, 5460, 5465, and 6050 of Remington & Ballinger's Annotated Codes and Statutes of Washington.

Pierce's Code, 1912, Repealed. 139 §§17, 19, 25, 31, 33, 35, 37-41, 43, 75—103 §§91, 177, 221—195 §§15, 17, 25, 27—231 §§1-11, 15-21, 25, 27, 85, 87, 91, 99, 105, 117-25—259 §1—461 §§5, 7, 29, 31, 43.

9 §119. **Other Appropriations Apply.** §15. Upon the taking effect of this act the commissioner of agriculture shall be authorized and empowered to expend any appropriation made for any department, the powers and duties of which are vested in and required to be performed by such commissioner under the provisions of this act, for the purposes for which the same was appropriated.

AN ACT creating the bureau of farm development of the State of Washington, providing for the appointment and maintenance of agricultural experts thereunder, and empowering the boards of county commissioners of the several counties of the State of Washington to appropriate, and set aside moneys therefor, and declaring an emergency. Approved February 28, 1913. Laws '13, ch. 18.

9 §121. **Bureau of Farm Development.** §1. There is hereby created the bureau of farm development of the State of Washington, which shall consist of the director of the experiment station of the State College of Washington, who shall be director thereof, and of the boards of county commissioners of all counties of the State of Washington desiring to participate therein. The officers and members of such bureau of farm development shall serve without salary, and the expenses incident to the operation of said bureau of farm development shall be borne by the county for which the same shall be incurred.

9 §123. **Agricultural Expert—Salary.** §2. The board of county commissioners of any county may by request in writing apply to the director of the bureau of farm development who shall appoint and assign to such county a competent agricultural expert: Provided, That the board of county commissioners applying therefor shall always have the right to reject any appointment, to determine the period during which such expert shall be employed, and to fix the compensation of such expert, not exceeding two hundred dollars (\$200.00) per month, and in their discretion necessary traveling expenses.

9 §125. **Office and Equipment.** §3. Such expert shall during the period of his employment reside and maintain an office within the county for which he is appointed, and, with the consent of the board of county commissioners of such county he may employ such assistance as may be required and purchase such books, equipment, apparatus, and material as may be required, which books, equipment, apparatus, and material shall become and remain the property of the county: Provided, That the expenses which may be incurred by the authority of this section shall never exceed the sum of twelve hundred dollars during any calendar year.

9 §127. **Duty of Expert—Co-operation with United States.** §4. Such experts shall give individual instruction and conduct experimental work with the object of improving the agricultural methods and conditions of their counties, and shall perform such other duties as may be required, subject to the general supervision and control of the director of the bureau of farm development: Provided, That the boards of county commissioners shall always have the right to co-operate with the department of agriculture of the United States in the appointment, maintenance, and work of such experts; and in such event, the director of the bureau of farm development shall appoint for the county exercising the privilege herein granted such person as said department of agriculture may recommend, and said expert shall then be subject to the general supervision and control of said department of agriculture, and said department of agriculture shall defray such portion as may be agreed upon of the salary, office expenses, and other expenses incurred by such expert.

9 §129. **Tax Levy.** §5. For the purpose of fully and effectively carrying out the object and provisions of this act, the board of county commissioners participating herein of the several counties of the State of Washington are hereby empowered to levy, appropriate, and set aside such sum of money as may be necessary, not exceeding three thousand and six hundred dollars for any calendar year; and in the event of a failure from any cause to levy and appropriate such fund, and until the next annual tax levy, said boards of county commissioners are empowered to set aside such fund from the county current expense fund.

AN ACT relating to agriculture; promoting the general welfare by bringing into productive use the unimproved agricultural lands of this state and aiding in the production and marketing of agricultural products; providing for the establishment of agricultural development districts, and authorizing the investment of all public funds in the bonds of such districts. Approved March 21, 1913. Laws '13, ch. 155.

9 §133. **Agricultural Districts Created.** §1. For the purpose of improving the agricultural lands of this state and encouraging their most productive use, agricultural development districts are hereby authorized to be established in the various counties in this state, as hereinafter provided.

9 §135. **Petition—Election.** §2. At any general election, or at any special election which may be called for that purpose, the board of county commissioners of any county in this state may, and on petition of ten per cent. of the qualified electors of such county based on the total vote cast in the last general county election shall, by resolution submit to the voters of such county the proposition of creating an agricultural development district, which shall be co-extensive with the limits of such county as now or hereafter established, except as provided in section 7.

9 §137. **Petition to Be Checked.** §3. Such petition shall be filed with the county auditor, who shall within fifteen (15) days examine the signatures thereto and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed agricultural development district.

9 §139. **Petition May Be Amended.** §4. If the signatures to such petition are found to be insufficient the petition shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen (15) days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor.

9 §141. **Election—Special Election.** §5. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the

board of county commissioners, who shall submit such proposition at the next general election or, if such petition so requests, the board of county commissioners shall, at their first meeting after the date of such certificate, by resolution call a special election to be held not less than thirty nor more than sixty days from the date of such certificate. Such notice of election shall describe the boundaries of the district and state the purpose for which such district is proposed to be formed.

9 §143. **Form of Ballot.** §6. In submitting the said question to the voters for their approval or rejection, the proposition shall be expressed on said ballot substantially in the following terms:

".....Agricultural Development District of.....Yes."

(Inserting the name of the county or number of district and county.)

".....Agricultural Development District of.....No."

(Inserting the name of the county or number of district and county.)

9 §145. **Districts Less than County.** §7. Any petition for the formation of an agricultural development district may describe a district of less area than the county in which such petition is filed, and in such event the county commissioners shall fix a date for hearing on such petition and publish a notice of such hearing for two weeks in a newspaper of general circulation in such county, after which hearing the county commissioners may increase or diminish the boundaries of such proposed agricultural development district, and thereafter the same procedure shall be followed as is prescribed in this act for the formation of the larger agricultural development district, except that the petition and election shall be confined solely to the lesser agricultural development district: And provided, That whenever two or more petitions for the formation of an agricultural development district shall be filed as herein provided, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser agricultural development district shall ever be created within the limits, in whole or in part, of any agricultural development district.

9 §147. **Canvass of Returns.** §8. Within five days after such election the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the board of county commissioners shall so declare in its canvass of the returns of such election and such agricultural development district shall then be and become a municipal corporation of the State of Washington and the name of such agricultural development district shall be "Agricultural Development District of....." (inserting the name on the ballot.)

9 §149. **Repaid Expenses.** §9. All expenses of election for the formation of such agricultural development district shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the agricultural development district, if formed.

Election of Commissioners.

9 §151. **Agricultural Commission—Public Officers Shall Advise—No Interest in Work.** §10. The powers of the agricultural development district shall be exercised through an agricultural development commission consisting of three members, who shall serve without pay, save expenses incurred in the course of their duties under the provisions of this act. For the purposes of this act the said commissioners shall be entitled to the advice and service of all state, county and municipal officers and institutions, particularly engineers, agricultural chemists, directors of experiment stations, and the state department of agriculture, and all such officers and institutions are hereby authorized and directed to co-operate with said commissioners in furthering the purposes of this act. Said commissioners are hereby forbidden to become interested, directly or indirectly, in any purchase, contract or work under this act, and any such interest is hereby declared void.

9 §153. **Commissioners, Election.** §11. The said commissioners shall be elected one from each of the county commissioner districts of the county in which the agricultural development district is located, when the agricultural

development district is co-extensive with the limits of such county. When the agricultural development district comprises only a portion of the county, three commissioner districts numbered consecutively having approximately equal population and with boundaries following ward and precinct lines, shall be described in the petition for the formation of the agricultural development district, and one commissioner shall be elected from each of the said commissioner districts. Said commissioners shall hold office for a term of three years and until their respective successors are elected and qualified, each term to commence on the second Monday in January following the election thereto. At the same election at which the proposition is submitted to the voters as to whether an agricultural development district shall be formed, three commissioners shall be elected to hold office, respectively, for the term of one, two and three years. All candidates shall be voted upon by the entire agricultural development district, and the candidate residing in commissioner district number one receiving the highest number of votes in the agricultural development district shall hold office for the term of three (3) years; and the candidate residing in commissioner district number two receiving the highest number of votes in the agricultural development district shall hold office for the term of two years, and the candidate residing in commissioner district number three receiving the highest number of votes in the agricultural development district shall hold office for the term of one year, each of said terms to date from the second Monday in January following the election, but also to include the period intervening between the election and the second Monday in January following.

9 §155.—**Qualifications.** §12. No person shall be eligible to hold the office of an agricultural development commissioner unless he is a qualified voter, a freeholder within such agricultural development district, and is and has been a resident for a period of three (3) years of the commissioner district from which he is elected.

9 §157. **Nomination of Commissioners.** §13. Nominations for agricultural development commissioners at the first special election and at subsequent general elections shall be by petition of not less than one per cent. of the qualified electors of the commissioner district in which the candidate is a resident, to be filed in the office of the county auditor at least twenty days prior to such election.

9 §159. **Vacancies.** §14. A vacancy in the office of agricultural development commissioner shall occur by death, resignation, removal, conviction of a felony, non-attendance at meetings of the agricultural development commission for a period of sixty days unless excused by the agricultural development commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty.

9 §161. **Filling Vacancies.** §15. In the event of a vacancy in the office of agricultural development commissioner by death, resignation, or otherwise, such vacancy shall be filled at the next general election, the vacancy in the interim to be filled by appointment by a majority vote of the remaining agricultural development commissioners. In the event that such ad interim appointment shall not be made by the remaining commissioners within thirty (30) days following the occurrence of the vacancy, the appointment shall be made forthwith by the superior court of the county. If there should be at the time more than one vacancy, a special election shall be called to fill the same, by the remaining member, or, that failing, by the board of county commissioners of the county, such election to be held not more than forty days after the occurring of such vacancies.

9 §163. **Conduct of Elections.** §16. The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers, except as otherwise provided in this act.

9 §165. **Time of Elections.** §17. A general election shall be held on the first Saturday in December of each year (except the first Saturday in December immediately following the creation of such agricultural development district), for the election of agricultural development commissioners and

for the submission of propositions, and special elections shall be held at such other times and for such purposes as the agricultural development commissioners may by resolution prescribe, subject to the limitations and pursuant to the requirements of this act.

§167. **Notice of Election.** §18. All notices of election shall be given by publishing the same for a period of ten days in a daily newspaper of general circulation in said agricultural development district, or in at least two issues of a weekly newspaper of general circulation in said agricultural development district, such publication to be made within a period of twenty days immediately preceding such election; and by posting, for at least ten days prior to the date of election, a written or printed notice of such election in each polling place within such agricultural development district. The published notice shall give the time of holding the election, the hours the polls will remain open, the officer or officers to be elected, and a statement of the propositions to be submitted; and the posted notices shall, in addition, give the location of the polling places.

9 §169. **City Registration Used.** §19. Officers of the city and county having charge of the registration books of any city or precinct in an agricultural development district shall deliver the same for the use of the election officers at all agricultural development elections. In the event of such registration books being required by law to be used by any school district or other public corporation at the same time as the use thereof will be necessary to the agricultural development district, such books shall be delivered to the agricultural development commission and school district or other public corporation jointly, and the same polling places and registration books may be used jointly in such cases, and the same individuals may serve as election officers for all such joint elections, and in such cases the compensation of such election officers and other expenses shall be so divided that the agricultural development district shall bear only its proportionate share thereof.

9 §171. **Polling Places.** §20. There shall be not less than one polling place in each of the various wards of any incorporated city within such agricultural development district, and one polling place within each precinct of each agricultural development district not within the limits of any incorporated city. It shall be the duty of the county commissioners in the formation of the agricultural development district, and of the agricultural development commission in all subsequent elections to designate the polling places and appoint three election officers for each place of voting at least twenty days before each election.

9 §173. **Polls, Time Open.** §21. The polls shall be open between such hours of the day as the commission shall designate, but in every case the polls shall be open between one o'clock p. m. and eight o'clock p. m.

9 §175. **Canvass of Returns.** §22. Immediately after the closing of the polls the election officers shall then and there, without removing the ballot box from the place where the ballots were cast, proceed to count the votes, and as soon as such count is completed a return thereof shall be signed by such election officers and securely enveloped and sealed and delivered, together with the ballot box containing the ballots, to the agricultural development commission, or some person delegated to receive the same on their behalf.

Within five days after the election, the agricultural development commission shall meet and proceed to canvass the returns of such election, and shall thereupon declare the result.

9 §177. **Voters, Qualifications Of.** §23. All electors who are, at the time of such election, duly qualified to vote within their respective precincts under the general election laws for state and county officers shall be entitled to vote at any election held in such agricultural development district.

Powers of District.

9 §179. **Powers of District.** §24. All agricultural development districts organized under the provisions of this act shall be and are hereby authorized to exercise the following rights and powers, and all other rights and powers necessary for the purposes of this act.

(a) To acquire by purchase, condemnation and purchase or otherwise all lands, property rights, leases; or easements necessary for the purposes of the agricultural development district; also water for irrigation purposes from any public watercourse, lake, stream or any other source;

(b) To exercise the right of eminent domain in the acquirement or damaging of all lands, property, property rights, leases or easements, and levying and collection of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said district shall have been created. Such right shall be exercised in the same manner and by the same procedure as is or may be provided by law for cities of the first class, except in so far as such law may be inconsistent with the provisions of this act, and that the duties devolving upon the city treasurer under such law are hereby imposed upon the county treasurer for the purposes of this act;

(c) To own and control lands, leases, and all easements in land necessary for the purposes of such agricultural development districts;

(d) To sell or lease lands and other property owned and controlled by said agricultural development district as hereinafter provided, and to execute all titles, leases and any other papers and documents in connection therewith, or incidental thereto;

(e) To build, improve or repair any roads within the agricultural development district;

(f) To raise revenue by levy of an annual tax on all taxable property within such agricultural development district, not exceeding two mills in any one year: Provided, That such levy shall be made and taxes collected in the manner now or hereafter provided by law for the levy and collection of taxes in school districts of the first class;

(g) To purchase, manufacture or otherwise acquire all materials and equipments necessary for the improvement of agricultural lands under the provisions of this act, and to sell or lease such materials and equipments at cost to farmers and settlers, within such agricultural development district;

(h) To give such aid in the production and marketing of agricultural products, not inconsistent with law, as said commissioners may deem proper;

(i) To borrow money and issue bonds as provided by the state constitution for municipal corporations. General bonds of any such district may be issued for any period not exceeding twenty years.

(j) To create and fill such positions and offices and fix salaries and bonds thereof as may be necessary for the purposes of this act.

Organization of Board.

9 §181. **Board, Organization Of.** §25. The agricultural development commission shall organize by the election annually from its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business, and shall adopt an official seal.

9 §183. **Record of Books.** §26. All proceedings of the agricultural development commission shall be by a resolution recorded in a book or books kept for such purpose, which shall be public records.

9 §185. **Funds, How Paid Out.** §27. All funds of the agricultural development district shall be paid to the county treasurer, and all disbursements shall be made by such officer on warrants drawn by the county auditor upon order of or vouchers approved by the agricultural development commission. No payments of any kind under this act shall be paid except upon certificate of the agricultural development commission that the sum therein named has been justly incurred, is necessary for or is due to the person, firm or corporation therein named over and above all just credits and offsets for services performed or to be performed or material furnished or property sold to the agricultural development district for the uses of this act.

9 §187. **"Funds" Created.** §28. The county treasurer shall create a fund to be designated the "Agricultural Development Fund," into which shall be paid all money received by him in behalf of such agricultural development district, and no money shall be disbursed therefrom except upon warrants of the county auditor issued as in this act provided. The county treasurer

shall also maintain such other special funds as may be prescribed by the agricultural development commission, into which shall be placed such moneys as the agricultural development commission may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by the authority of the agricultural development commission.

9 §189. **Anticipation of Revenues.** §29. Any agricultural development commission created under the provisions of this act is hereby authorized, prior to the receipt of taxes raised by levy, to borrow money or issue the warrants of the district in anticipation of the revenues to be derived by such district from the levy of taxes for the purpose of such district during the first year, and such warrants shall be redeemed from the first money available from such taxes when collected.

Developing Agricultural Lands.

9 §191. **Lands to be Investigated.** §30. It shall be the duty of the said commissioners, as promptly as possible after the organization of such district, to commence an investigation of the unimproved agricultural lands within such district, for the purpose of determining what portions or areas of such lands are adapted to economical irrigation or clearing, and adapted for sale or lease as agricultural lands to settlers. For the purpose of such investigation the said commissioners are authorized to employ all necessary assistants, and shall be entitled to the services of all state, county and municipal officers and institutions in accordance with section ten of this act.

9 §193. **Scope of Investigation.** §31. Such investigation shall include a description of the qualities of the soil and of the locality as regards existing highways and railway transportation, also an estimated cost of clearing such lands or of conducting water upon any proposed tract, and shall point out the opportunities for reservoir sites and the probable cost of acquiring such sites for purposes of irrigating tracts of land. The result of such investigation shall be kept on record in the office of said commissioners, and a certified copy thereof shall be sent to the state department of agriculture for public information and use.

9 §195. **Lands, How Acquired—Price.** §32. The said commissioners shall have power to acquire by purchase or otherwise, except by condemnation, in accordance with the provisions of this act any undeveloped agricultural lands within the limits of the agricultural development district, for the purpose of improving and fitting such lands for productive use, but no lands may be acquired under this act from private owners (except from settlers under the provisions of sections 35 and 36 of this act) at a price exceeding twenty dollars an acre for logged-off lands and twenty-five dollars an acre for arid lands, and unless authorized by subsequent legislation no lands shall be cleared when the estimate therefor shall exceed one hundred dollars an acre.

9 §197. **Land to Be Taxed at Price Refused.** §33. In negotiating for the purchase of unimproved agricultural lands, whenever there shall have been offered in writing to a private owner a certain price and it shall be refused, the commissioners shall report that fact to the county assessor forthwith, and the price refused for such lands shall be considered by the assessor in respect to such and similar lands in that vicinity.

9 §199. **Purchase at Public Sale.** §34. The said commissioners may lease or purchase any undeveloped agricultural lands at public auction or otherwise in accordance with law, including school and granted lands, for the purpose of bringing such lands into productive use, and may sell or lease the lands so acquired and improved for agricultural use as provided in sections 44 to 49 of this act.

9 §201. **Repurchase by Vendor.** §35. All citizens of this state shall be entitled to the benefits of this act as provided in this and the next following section. Any settler, being a citizen of the United States may offer not to exceed twenty acres of undeveloped, logged-off agricultural lands for sale to the commissioners of the agricultural development district in which such lands are located, and if the offer be accepted, then such vendor shall have

a preferential right after such lands have been cleared and improved for agricultural use to repurchase and entry of not to exceed twenty acres of such lands, upon the terms described in sections 44 to 49 of this act, notwithstanding that such vendor may retain ownership of other lands not offered to said commissioners. Such vendors and repurchasers shall be subject to all the terms and conditions imposed by this act upon other purchasers.

9 §203. **Preferential Rights to Clear.** §36. When logged-off or cut-over lands have been sold by settlers subject to the right of preferential repurchase as provided in the next preceeding section of this act, the commissioners shall give preference to the vendors of such lands when letting contracts for the clearing and improving of the same: Provided, Such vendors undertake by contract in writing, on such terms and conditions as said commissioners may prescribe, to effect such clearing and improving at a price not exceeding the most satisfactory tender received by the commissioners from outside bidders, or in any case not exceeding a reasonable price in view of the value of such lands for agricultural purposes.

9 §205. **Advertisement for Bids.** §37. Before awarding any contract (except only in the case of preferential purchasers provided for in section 36 of this act) the agricultural development commission shall cause to be published, in some newspaper within the district for at least fifteen days before the letting of such contract, a notice inviting sealed proposals for such work, plans and specifications for which must at the time of publication of such notice be on file in the office of the agricultural development commission subject to public inspection: Provided, however, That the agricultural development commission may at the same time, and as a part of the same notice, invite tenders for said work or materials upon plans and specifications to be submitted by the bidder. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the commission on or before the day and hour named.

9 §207. **Checks With Bids.** §38. Each bid, tender or proposal named in section 37 of this act shall be accompanied by a certified check payable to the order of the agricultural development commission for a sum not less than five per cent. of the amount of such bid, and no bid, tender or proposal shall be considered unless accompanied by such check.

9 §209. **Opening Bids.** §39. At the time and place named such bids shall be publicly opened and read and the commission shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all checks shall be returned to the bidders.

9 §211. **Bond by Bidder—Contract.** §40. If such contract be let, then and in such case all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing of such work, and a bond given to the agricultural development district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commissioners, in an amount to be fixed by the commission, but not in any event less than twenty-five per cent. of the contract price. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within fifteen days from the date at which he is notified that he is the successful bidder, the said check and the amount thereof shall be forfeited to the agricultural development district.

9 §213. **Materials—Method of Doing Work.** §41. All materials and equipments required by the agricultural development district for the purposes of this act may be manufactured or purchased in the open market or by contract, and all work ordered may be let by contract or done by day labor, as the agricultural development commission may determine.

9 §215. **Lands Subdivided—Sale—Roads.** §42. The commissioners shall cause all lands in their possession or control to be subdivided into the smallest practicable tracts, in order to provide for as many settlers as possible, giving preference whenever practicable to resident householders with fami-

lies depending upon them. All tracts distant less than one mile from a state or county highway shall be connected by a temporary road, and the proportion which any particular tract should bear of the expense of that road shall be estimated by said commissioners against that tract in the price subsequently to be placed upon it for purposes of future sale or lease.

9 §217. **Statement of Cost of Tracts.** §43. Whenever agricultural lands have been cleared or otherwise improved under the provisions of this act, the commissioners shall prepare a statement finally showing, in respect to each tract, in detail, the original cost of acquired lands, the cost of clearing, the quantity cleared, the soil analysis, the condition of the uncleared portion, and such other particulars as experience may show to be useful data for colonists, and shall keep such statements on permanent record and transmit a certified copy thereof to the state department of agriculture for public information and use.

9 §219. **Sale, Terms of Payment.** §44. The said commissioners, as soon and so often as any lands acquired by purchase or otherwise are cleared and improved as aforesaid, shall cause the same to be appraised and offered to settlers on twenty equal annual payments (or less if so requested by the settler) at not less than the cost of their acquisition and improvement plus five per cent. One-half of one per cent. per annum above the rate realized by the agricultural development district on its issue of bonds, and not less than four and one-half per cent. per annum, interest shall be charged on deferred payments.

9 §221. **Priority of Applicants—Terms of Sale.** §45. The manner of sale shall be by application and entry with priority to the first applicant. The commissioners shall execute the contracts of sale to purchasers on behalf of the agricultural development district in such form as shall carry out the intent of this statute to encourage settlement, and they shall make reasonable rules and regulations in respect thereto to insure good faith from the purchaser.

9 §223. **Assignment of Claims—Pre-emption.** §46. No assignment of any claim by any purchaser shall be permitted until after such purchaser has made at least three annual payments and also has actually resided on the land at least two years. Continuous residence of not less than three years shall be required of any purchaser who may desire to anticipate the remaining payments and pre-empt the tract. The commissioners may on written application therefor, but are not required to permit in writing an absence from the land of not to exceed five continuous months in any one year.

9 §225. **Purchasers Allowed Only One Tract—Aliens.** §47. No purchaser shall directly or indirectly acquire more than one tract. Tracts may be entered by persons who are not yet citizens of the United States, but all contracts shall provide that title shall not be delivered, notwithstanding the acceptance of payments meantime, until the purchaser has declared intention in good faith to become a citizen of the United States. All tracts shall be entered in parcels of not to exceed twenty acres each.

Irrigable Lands.

9 §227. **Irrigation, Surrender of Lands—Estimates.** §48. In respect of irrigable lands, whenever and so often as the commissioners shall have decided upon improvement thereof by a system of irrigation, then said commissioners are authorized to acquire by purchase, by condemnation and purchase, or by any other lawful means any reservoir sites or other land necessary for reservoirs, canals, ditches and laterals, within or without the district: Provided, They shall first have obtained offers from the owners of two-thirds of the lands that can be watered therefrom, or from an irrigation district or company, to accept distribution from such reservoirs, which offer shall be in form binding upon such owners or irrigation districts or companies during a period sufficient and reasonable for the construction of the reservoir. The commissioners, having obtained such binding offers, may then call for the written opinion of some competent engineering expert, showing the estimated cost of the reservoir, its capacity, the area that can be watered therefrom and the source and constancy of supply thereto, and when reports thereon

satisfactory to the commissioners shall be filed, they may proceed with the construction of any works within or without the district which in the opinion of said commissioners may be necessary for the impounding and distribution of the waters.

9 §229. **Purchase of Lands—Assessment.** §49. The commissioners may make offer to purchase from private owners any lands necessary, in whole or in part, for the purpose of such reservoir, canals, ditches and laterals aforementioned and if the price offered be refused, they shall certify such offer and refusal to the assessor of taxes in the county where such lands are situated and the price refused for such lands shall be considered by the assessor in respect of such and all similarly situated lands in the next assessment.

9 §231. **Construction of Works—Sale of Water.** §50. Whenever the said commissioners feel justified in so doing, in view of the provisions of section 48 of this act, they may construct any reservoirs, canals, pipe lines, ditches, laterals and other necessary works, within or without the district, by contract or by direct labor, in such manner as in their judgment shall most effectively and economically store and distribute the water at least cost; and may sell perpetual water rights to individual land owners, or may supply water to irrigation districts or companies, on terms of twenty annual payments (or less if so requested by such owners, districts or companies), with interest on deferred payments at the rate of not less than four and one-half per cent. per annum, and not in any case less than one-half of one per cent. per annum above the rate realized by the agricultural development district upon its issue of bonds, of which the proceeds, directly or indirectly, may go into such undertaking.

9 §233. **Price of Water—Maintenance.** §51. The price per acre, for a water right shall be determined by dividing the total cost to the district of acquiring and constructing the reservoir and distribution system (including all expenses in connection therewith or incidental thereto), by the number of acres furnished with water rights therefrom; and an annual charge per acre for water rights may be levied for maintenance of such reservoir and distribution systems.

9 §235. **Sale of Lands of District.** §52. Whenever and so often as the district may itself own or acquire any lands watered by such irrigation works, it may dispose of such lands to settlers, irrigation districts or companies upon the terms, interest rates and conditions described in section 50 of this act.

9 §237. **Restrictions on Sale.** §53. Until the legislature shall otherwise provide, the commissioners shall not sell or dispose of any irrigable lands to any one firm, person, or corporation exceeding forty acres, directly or indirectly, or sell or dispose of water rights to any firm, person or corporation to any tract exceeding one hundred and sixty acres, nor shall any assignment between holders be effective to evade these provisions without the written consent of the commissioners.

9 §239. **Lease of Lands.** §54. Any land or other property owned or controlled by the agricultural development district may, in the discretion of the commissioners, be leased for a period of not exceeding twenty years, on such terms and conditions as the commissioners may determine: Provided, That in all leases of land or property the net income therefrom to the agricultural development district, after allowing for depreciation, shall be not less than six per cent. per annum of the fair selling value of such land or property, and shall in any case be sufficient to yield a net interest return to the district upon such investment at the rate of one-half of one per cent. above the rate realized by the district upon any issues of bonds, the proceeds of which directly or indirectly may enter into the cost to the district of such land or property.

9 §241. **By-Products.** §55. It shall be the duty of the commissioners to utilize, as far as practicable any and all by-products from the lands secured, cleared and otherwise improved by them, and to make tests for the utilization and sale of by-products, and to manufacture or purchase equipment for any processes that may prove successful for that purpose.

Issuance of Bonds.

9 §243. **Bonds.** §56. To provide funds for its purposes, any agricultural development district formed under authority of this act may issue negotiable bonds, to be designated "Agricultural Development Bonds." These bonds shall be payable not more than twenty years after their date, and shall be executed in accordance with law by the president of the agricultural development commission and attested by the secretary thereof. They shall be registered or coupon bonds, issued in denominations of not less than one hundred nor more than one thousand dollars each, numbered from one up consecutively, and shall bear interest, payable semi-annually, at a rate of not to exceed six per cent. per annum. They shall be disposed of serially, dated the day of issuance, and shall not bear interest until after their actual sale, and shall be sold only when their proceeds may from time to time be required. The principal and interest shall be payable at such place as may be designated in the bond. The bonds and each coupon shall be signed by said presiding officer, and shall be attested by the secretary under the seal of the agricultural development district. Such bonds shall be sold in such manner as the agricultural commission may by resolution declare to be for the best interest of the district. A register shall be kept of all the bonds issued, showing the number, date, amount, interest, to whom delivered (if coupon bonds) and the name of payee (if registered bonds); and also showing each and every bond executed, issued or sold under the provisions of this act, and when and where payable.

The coupons for the payment of interest on said bonds shall be considered for all purposes as warrants drawn upon the general fund of the agricultural development district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such agricultural development district, if there are no funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to indorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the rate named in the bond.

9 §245. **Form of Bonds.** §57. The form of the bond shall be substantially as follows:

\$.....

No.....

UNITED STATES OF AMERICA
STATE OF WASHINGTON
AGRICULTURAL DEVELOPMENT BOND

The.....Agricultural Development District of.....in the State of Washington, for value received, hereby promises to pay to bearer, or to the registered holder of this bond, if the same be registered, on the 1st day of, 19....., the sum of.....Dollars with interest thereon at the rate of.....per centum per annum, payable semi-annually on the first day of.....and.....in each year upon the presentation and surrender of the annexed interest coupons, as they severally become due: both principal and interest of this bond are payable in gold coin of the United States, of the present standard weight and fineness, at the.....County Treasury, in the State of Washington; for the prompt payment whereof, both principal and interest as they mature, the full faith, credit and resources of the.....Agricultural Development District of, in the State of Washington, are hereby irrevocably pledged.

It is redeemable on any interest date occurring.....or more years after the date hereof, at par, and interest on this bond shall cease when it is called for payment either at maturity or by redemption before maturity.

This bond is one of an issue of.....similar bonds authorized by the legislature of the State of Washington in a statute passed in the year 1913 and entitled: (here insert the exact title of act.)

It is hereby certified and declared that all conditions and things required by the constitution and laws of the State of Washington to exist and be done precedent to the issuance of this bond have existed and been done in due and regular form, as required by law, and that this bond is by virtue of the law made incontestible for any informalities preceding its issuance, and the

signatures of the president and the secretary hereto attached, together with the seal of the.....Agricultural Development District of..... in the State of Washington, are warrants to the holder thereof of the due execution and valid consideration for this instrument.

In Testimony Whereof the said president and secretary have hereto affixed their signatures and attached an impression of the seal of the.....Agricultural Development District of....., in the State of Washington, and the coupons hereto annexed have been executed by lithographed fac simile in accordance with the act this.....this day of....., 19.....

9 §247. **Public Funds to Be Invested in Bonds.** §58. All state, county, municipal and other public funds may be invested in such bonds of any agricultural development districts established under authority of this act, and such bonds shall be a preferential investment for the permanent school fund, second only to school district bonds, except when a higher rate of interest can be secured for the school fund by investment in other municipal bonds.

9 §249. **Laws For Distribution.** §59. The secretary of state is hereby authorized and directed to print for general distribution not less than 100,000 copies of this act, with such explanatory notes and comments as may be useful for the information of immigrants and settlers desiring to acquire or improve agricultural lands in this state.

9 §250. **State Powder Factory.** For the purpose of establishing a state powder factory at the agricultural experiment grounds near Puyallup from the general fund the sum of \$50,000.00. Provided, This amount shall be expended under the direction of the State Board of Control who shall acquire by purchase, condemnation or otherwise, a suitable site for such factory and make all needful rules and regulations for the construction and operation of such factory, and for the sale of the product thereof: Provided, Powder manufactured in such establishment shall be sold only to the state, county or other municipality for improvement purposes or to actual citizens of the United States and the citizens of the State of Washington for land clearing purposes and shall be sold as nearly the cost of manufacture as the board may deem advisable: And provided further, The governor may if he deems best, appoint a committee of three, one of whom shall be the chemist of the state college, to make an investigation and report back in detail, the best possible plan for the construction of such factory and the manufacture of powder therein and the governor may authorize such committee to superintend the construction of such factory: And provided further, That if some other site or location shall be deemed by said board or committee better than the site or location at or adjoining the agricultural experiment station ground then such site may be selected and such factory constructed thereon: Provided, further, That in case the governor after a thorough investigation finds that it is not advisable for the state to expend the money hereby appropriated for the purpose above specified, the above amount or so much thereof as is not expended for investigation shall return to the general fund. L. '13, ch. 184.

25 §33.

Failure to give or file notice defeats lien, *Kern v. Chicago M. & P. S. Ry. Co.*, 201 Fed. 404.

Claim must be filed prior to assignment of judgment in order to take precedence over the assignment, *Humptulips Driving Co. v. Cross*, 65 W. 636.

25 §47.

No valid contract can be made for an attorney fee less than actually received in the settlement of a mortgage foreclosure suit, *Thayer v. Harrbican*, 70 W. 278.

33 §15.

Does not apply between street cars and other vehicles, *O'Brien v. Wash. Water Power Co.*, 71 or 72 W.

Vehicle on wrong side of street injured pedestrian—instruction to jury, *Segerstrom v. Lawrence*, 64 W. 245.

33 §19.

Unlighted machine and careless running of another—collision—injury to third person, *Jaquith v. Wordin*, 73 W.

Statute does not supersede requirements of reasonable care, *Hillebrant v. Manz*, 71 W.

TITLE 41—BANKS AND BANKING.

41 §11. **"Banking," "Bank"—"Branch Bank."** §6. The term "banking" within the meaning of this act shall mean the negotiations for, the discounting of, promissory notes, drafts, bills of exchange and other evidence of indebtedness, receiving deposits, selling and buying exchange, coin and bullion, and loaning money on personal, real and other securities, and other kindred financial operations; and also shall be construed and held to mean the receiving of moneys on deposit, or savings account subject to withdrawal on demand or subject to withdrawal by any method within four months from the opening of such account or subject to withdrawal at any subsequent time on less than one month's notice, and shall include any mutual or co-operative savings company or association, or a trust company, receiving money from time to time from persons, associations or corporations, to be held subject to withdrawal as aforesaid, whether received as a direct deposit or by way of payment on stock or certificates in any such mutual or co-operative association. The provisions of this act shall not be construed to apply to building and loan nor savings and loan associations organized under or transacting business conformably to the laws of this state. The term "bank" as used in this act shall be taken to mean and include every association, company or corporation (except national banks, and foreign banks not authorized to receive deposits) transacting a banking business in this state. The term "branch bank," as used in this act, shall be taken to mean an office of deposit or discount other than the bank's principal place of business. R&B §3315; L. 13, ch. 147.

41 §13. **Banks Subject to Act.** §7. Any bank, branch bank, or foreign bank which shall receive money on deposit, whether on certificate or subject to check or payment on stock of co-operative savings associations, or other method of demand withdrawal, or subject to withdrawal by any method within four months from the opening of such account or subject to withdrawal at any subsequent time on less than one month's notice shall be considered as doing a banking business. And promissory notes, receipts, certificates or pass books issued for money received on deposit or for payment on stock of co-operative associations where such promissory notes, receipts, certificates or pass books authorize the owner or holder to withdraw such money as aforesaid, shall be held to be certificates of deposit for the purposes of this act. And every such corporation, bank, branch bank or foreign bank receiving deposits as herein defined and provided shall be subject to all the provisions of this act and shall be subject to the same regulations, visitations and control. R&B §3316; L. 13 ch. 147.

41 §41. **May Hold Real Estate.** §21. Any bank transacting business in this state so far as not prohibited by the constitution of this state, may purchase, hold and convey real estate for the following purposes and no other:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices, other apartments in the same building to rent as a source of income.

(2) Such as shall be purchased by or conveyed to it in satisfaction, or on account of, debts previously contracted in the course of its business.

(3) Such as it shall purchase at sale under judgments, decrees, liens, or mortgage foreclosures, against securities held by it: Provided, That no such real estate, except that used in the transaction of its business, shall be carried as an asset on the books of the bank for a longer period than five years from the date of its purchase. R&B §330; L. 13, ch. 22.

41 §59. **Use of Names—Penalty.** §30. No person or persons, association or body corporate, except banks, or trust companies, incorporated under the laws of the United States, or the laws of the State of Washington, and existing foreign banks now doing business in the State of Washington, shall advertise or put forth a sign having thereon any of the following words: "Bank," "Banking Company," "Trust," or any other artificial or corporate name, or words indicating that such person, persons, association or body cor-

porate is a bank, trust company, or savings bank, or shall in any way solicit or receive deposits as an incorporated bank. Every person, association, or body corporate, violating the provisions of this act, shall be fined not more than one thousand dollars (\$1,000) per day for each day of such violation. From and after the first day of January, 1915, no person, persons, co-partnership, association, or body corporate except banks or trust companies incorporated under the laws of the United States or the laws of the State of Washington and existing foreign banks now doing business in the State of Washington, or mutual or co-operative savings companies or associations doing a banking business as defined in section 6 of this act, shall transact a banking business in this state. R&B §3339; L. '13, ch. 147.

41 §60. Private Banks Shall Incorporate. §301½. All firms or individuals who on January 1st, 1913, were conducting private banks and receiving deposits as such and who desire to do a banking business on and after January 1st, 1915, shall prior to that time incorporate under the laws of this state applicable thereto, and the capital stock of such corporation shall be in such a sum as is required by existing law, all of which shall be subscribed and at least ten thousand dollars thereof paid in cash, and the balance of said capital stock must be paid in at such time and in such amounts as shall be required by the state bank examiner. L. '13, ch. 147.

41 §60a. Act Saved From Court. §6. If any section, subdivision, sentence or clause of this act, for any reason, be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. L'13 Ch. 147.

41 §113. Powers. §4. As soon as the certificate of authority is issued by the bank examiner as provided in the preceding section, the persons named in the articles of incorporation and their successors shall thereupon and thereby become a corporation and shall have power:

Fiscal Agents: (1) To act as the fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money.

Agency Generally: (2) To transfer, register and countersign certificates of stock, bonds, or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

Deposits—Discounts: (3) To receive deposits of trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities, and to discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt; and to buy, sell and exchange coin and bullion.

Real Property: (4) To lease, hold, purchase and convey any and all real property necessary for and convenient in the transaction of its business, or which the purposes of the corporation may require, or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation under sales, judgments or mortgages, or in settlement or partial settlement of debts due the corporation from any of its debtors.

Trusts, Municipal: (5) To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipality or corporate trust not inconsistent with the laws of this state.

For Married Women: (6) To accept trusts from, and execute trusts for, married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

For Minors: (7) To act under the order, or appointment of any court of record as guardian, receiver or trustee of the estate of any minor, and as depository of any moneys paid into court, whether for the benefit of any such minor or other person, corporation or party.

Estates Generally: (8) To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or

by any person, corporation, municipal or other authority, and it shall be accountable to (all) parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

Trusts Generally: (9) To take, accept and execute any and all such trusts and powers of whatever nature or description as may be conferred up or intrusted or committed to it by any person or persons or by any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, and to receive, take and hold any property or estate, real or personal, which may be the subject of any such trust.

Commercial Paper: (10) To purchase, invest in and sell stocks, promissory notes, bills of exchange, bonds, debentures and mortgages and other securities; and when moneys are borrowed or received on deposit or for investment, the bonds or obligations of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

Assignee of Creditors: (11) To be appointed and accept the appointment of assignee or trustee, under any assignment for the benefit of creditors of any debtor, made pursuant to any statute or otherwise.

Receivers: (12) To act under the order or appointment of any court of record or otherwise as receiver or trustee of the estate or property of any person, firm, association or corporation.

Executor, or Guardian: (13) To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as guardian of the estate of lunatics, idiots, persons of unsound mind and habitual drunkards: Provided, however, The power hereby granted to trust companies to act as guardian or administrator, with or without the will annexed, shall not be construed to deprive parties of a prior right to have issued to them letter of guardianship, or of administrator with or without the will annexed, of the estate of any deceased person, other provided, That no trust company or other corporation, organized under this chapter which advertises that it will furnish legal advice, construct and prepare wills or do other legal work for its customers shall be permitted to act in the capacity as executor, trustee, assignee or otherwise serve in any fiduciary capacity; any such trust company or other corporation whose officers or agents shall solicit legal business for and on behalf of such trust company or corporation shall be disqualified from acting as trustee, assignee or from serving in any fiduciary capacity and shall be ineligible for appointment as such in any of the courts of this state.

Safe Deposit: (14) To exercise the powers conferred on and to carry on the business of a safe deposit company.

Interest Coupons: (15) To collect coupons on, or interest upon, all manner of securities when authorized so to do by the parties depositing the same.

Sinking Funds Agency: (16) To receive and manage any sinking fund of any corporation, upon such terms as may be agreed upon between such corporation and those dealing with it.

All Trusts: (17) Generally to execute trusts of every description not inconsistent with the laws of this state or of the United States.

Commercial Deposits: (18) To receive money on deposit to be subject to check or to be repaid in such manner and on such terms, and with or without interest, as may be agreed upon by the depositor and the said trust company.

Abstracts and Title Insurance: (19) To make and certify abstracts of title to real property and to insure any person or corporation claiming to own or to have any interest in any real property or encumbrance thereon by mortgage, lease, lien, contract or otherwise against loss by reason of liens, encumbrances or imperfections of title, or any adverse claim of title: Provided, however, That no company organized under this chapter shall be subject to any other insurance law of the State of Washington: Provided, further, That no trust company engaged in the business of banking shall be permitted to do any of the acts mentioned in this subdivision. R&B §3349; L. '13, ch. 177.

41 §153. **Joint Deposits Paid to Any Depositor:** §1. When a deposit has been made, or shall hereafter be made in any bank or trust company transacting business in this state in the name of two or more persons, payable to any of such persons, such deposit or any part thereof, or interest, or dividend thereon, may be paid to any of said persons, whether the others be living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to such bank or trust company for any payment so made. R&B §3364; L. '13, ch. 9.

TITLE 45—BARBERS.

45 §9. **Treasurer's Bond.** §5. The treasurer of said board shall give surety bond to be approved by and deposited with the auditor of the state in the sum of \$1,000, and the members of said board shall take the oath provided by law for public offices. The cost of said bond shall be paid by the state. R&B §701; L. '13, ch. 84.

45 §11. **Pay of Board—Fees Paid In.** §6. Each member of the barbers examining board shall receive a compensation of five dollars per day for each day in which he is actually and necessarily engaged in attendance upon meetings of the board, and in going to and in returning from the place of meeting, and all necessary expenses incurred in attending such meeting; all such compensations and expenses and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers, to be approved by a majority of said board, as in the case of state officers. The secretary and treasurer of said board shall receive a compensation to be determined by said board not to exceed \$50 per month. All money received or collected by said board or any member or officer thereof during any month shall be turned over before the tenth day of the succeeding month to the state treasurer together with a verified statement showing the sources from which such money was derived. R&B §7011; L. '13 ch. 84.

53 §39.

Surety is not subrogated to rights of county against defaulting official, *Am. Bonding Co. v. Welts*, 193 Fed. 978.

57 §1.

Proceedings subject to the rules of adverse possession, *Wissinger v. Reid*, 69 W.

684.

Available only where the court cannot say from the evidence that a corner is lost or uncertain, *Hale v. Ball*, 70 W. 435.

Possession under mistaken boundary sufficient, *Wissinger v. Reid*, 69 W. 684.

TITLE 61—BRIDGES.

AN ACT relating to the purchase, construction, maintenance, control and operation of bridges in this state and between this state and adjoining states, counties, cities and towns, and providing for the co-operation of the said counties, cities and towns in this state with each other and with the United States, or adjoining states or the counties, cities or towns therein, in the purchase, construction, maintenance, control and operation of the same. Approved March 11, 1913. Laws '13, ch. 56.

61 §21. **Public Authorities May Join.** §1. The State of Washington and all counties, cities or towns within the state are hereby authorized and empowered to join with each other or to aid the State of Washington, the federal government, or any adjoining county, city or town in this state, or to jointly or separately join with any adjoining state, county, city or town in the purchase, construction, control, operation and maintenance of any bridge or bridges over or across any river, stream or body of water being within or constituting the boundary line of the state or of any county therein.

61 §22. **Highway Board Shall Act for State.** §2. That whenever the legislature of the State of Washington shall have made provision for the purchase or construction of a bridge or bridges, jointly with counties, cities or towns in this or adjoining states, the state highway board is hereby authorized and empowered to represent and act for and on behalf of the State of Wash-

ington for the purpose of carrying into effect the provisions of this act, and any other act making an appropriation for the purchase or the construction of a bridge or bridges, which come under the provisions of this act, and when the State of Washington joins in the purchase or construction of a bridge jointly with adjoining states or with the counties, cities, or towns of any adjoining states, or jointly with counties, cities, or towns in this state, the purchase or construction of such bridge or bridges shall be under the direction, control and management of the state highway board acting jointly with the public authority legally authorized to represent and act for such adjoining state, county or city, and when counties or cities in this state shall join with the state for the purchase or construction of a bridge built or to be built in this state, or on the boundaries thereof, the money or funds furnished or provided by such county or city shall be expended under the direction, supervision and control of the state highway board, and under the provisions of this act.

61 §23. **Highway Commissioner Shall Act—Bids.** §3. Whenever provision is made for the purchase or construction of a bridge, which comes under the provisions of this act, the state highway commissioner, upon being directed by the state highway board, shall confer with the legally authorized public authorities of any adjoining state or city or county or cities within this state, and acting jointly with such authorities make or cause designs, maps, plans, specifications, drawings, details, estimates, and all other requirements for full information with reference to the location and construction of such bridge to be made, and shall determine the kind, character and dimensions of the bridge to be constructed, subject to the approval of the state highway board. That after the plans and specifications have been agreed upon by the public authorities, representing the respective states, counties, cities or towns interested, bids shall be advertised by giving such notice as the parties interested shall agree upon, Provided, That in no event shall less than thirty (30) days' notice be given. The notice shall provide that the contract shall be let to the lowest responsible bidder, and that the authorities acting jointly in giving the notice reserve the right to reject any and all bids, and the notice shall state the proportion of the total amount to be paid by each.

61 §25. **Bond Required.** § 4. That upon the final acceptance of the bid for the construction of a bridge, under the provisions of this act, the state highway board, acting jointly with the public authorities of any other state, county, or city, or county or city in this state, shall enter into a contract for the construction of the bridge and shall require the contractor to furnish a surety bond for the faithful performance of the contract, in such sum as shall be fixed by such joint authorities, and shall also require the contractor to furnish an additional bond in the sum to be fixed by the state highway board of Washington, conditioned as is provided in Pierce's Code 1912, 309 §§ 93 to 97, and shall file said last mentioned bond with the auditor of the State of Washington, which bond shall be approved by the attorney general.

61 §27. **Supervision of Work.** §5. The highway commissioner, when directed by the highway board, is hereby authorized to rent office rooms, purchase the necessary supplies and to employ clerical and engineering assistance necessary in making the preliminary arrangements, and during the construction of the bridge; the compensation of such employes to be fixed by the state highway board. The state highway board shall have authority to act jointly with the other public authorities interested in the construction of such bridge, to employ a supervising engineer to be in charge of the work of the construction of the bridge, whose compensation shall be fixed by the state highway board, and the public authorities of any adjoining state, county or city, joining in the construction of the bridge. The payment of salaries of employes and all other expenses shall be deemed a part of the construction work, and shall, including payments on contract, be made only on vouchers approved by the state highway commissioner, and payable only out of funds provided therefor.

61 §29. **Counties May Incur Debt.** §6. Whenever the board of county commissioners of any of the counties in this state shall deem it for the interest of the county to engage in or to aid in the purchase or construction

of any bridge or bridges, under the provisions of this act, and to incur indebtedness to meet the cost thereof and expenses connected therewith, and issue bonds of the county for the payment of such indebtedness or any thereof, such county is hereby authorized and empowered, by and through its county commissioners, to engage in or aid in any such work as aforesaid, and to incur indebtedness for such purpose or purposes to an amount which, together with the then existing indebtedness of such county, shall not exceed five (5) per centum of the taxable value of the taxable property in said county, as shown by the last previous assessment roll thereof for state and county purposes, and to issue negotiable bonds of the county for all or any such indebtedness, and for the payment thereof, in the manner and form and as is provided in Pierce's Code 1912, 421 §§19 to 33, and other laws of this state which shall then be in force, and to make part or all of such payment in bonds or moneys derived from sale or sales thereof, or partly in such bonds and partly in such money, provided that said commissioners shall have first submitted the question of incurring such indebtedness to the voters of the county at a general or special election, and three-fifths of the voters voting upon the question shall have voted in favor of incurring the same.

61 §31. **Money Expended by State.** §7. That any and every such purpose as is mentioned in the foregoing section is hereby declared to be a county purpose, and the bonds or the money derived from the sale of the same shall be deposited with the proper state authorities, as directed by the state highway board, and expended under the provisions of this act, provided that any bonds or funds so deposited and not used for such purpose shall be returned to the county making the deposit.

61 §33. **Cities May Incur Debt.** §8. That whenever the city council of any incorporated city or town in this state shall deem it advisable to join with or aid in the purchase or construction of any bridge or bridges within or partly within the corporate limits of such city or town, under the provisions of this act, and to contract indebtedness to meet the cost thereof and expense connected therewith, and to issue negotiable bonds of the city or town for the payment of such indebtedness, or any part thereof, said city or town by and through its council is hereby authorized and empowered to engage or aid in the purchase or construction of such bridge or bridges or public work, as aforesaid, and to incur indebtedness for such purpose or purposes to an amount which together with the then existing indebtedness of such city or town shall not exceed five (5) per centum of the taxable value of the taxable property of such city or town, to be ascertained by the last assessment of such city or town for city or town purposes, previous to the incurring of such indebtedness, and to issue negotiable bonds of such city or town for all or any such indebtedness, and for the payment thereof in the manner and form, as is provided in Pierce's Code, 1912, 421 §§69 to 85, and other laws of this state which shall then be in force, and to make a part or all of such payments in bonds or money derived from sale or sales thereof, or partly in such bonds and partly in such moneys, provided that the council of said city or town shall have first submitted the question of incurring such indebtedness to the voters of said city or town at a special election held according to law, and three-fifths of the legal ballots cast on said question shall be in favor of incurring such indebtedness.

61 §35. **Money Expended by State.** §9. That any and every such purpose as is mentioned in the last preceding section is hereby declared to be a strictly municipal purpose, and that the bonds, or the money derived from the sale of the same, shall be deposited with the proper state authorities, as directed by the state highway board, and expended under the provisions of this act, provided that any funds or bonds so deposited and not used for the purpose for which they were deposited shall be returned to the city or town so depositing the same.

61 §37. **Bridges State Property.** §10. That upon the purchase or construction of any bridge jointly or with any adjoining state, county or city, the same shall be accepted by the state highway board acting in conjunction with such public authorities of any adjoining state, county or city, joining in its construction, and the state shall own one-half of such bridge, and the

same shall become the exclusive property of the State of Washington, and under the control and management of the state highway board.

61 §39. **Cities and Counties May Join.** §11. That whenever it is deemed advisable by the common council of any city or town and the county commissioners of any county in this state to purchase or construct a bridge within or partly within such city or town, the council and commissioners are authorized and empowered to enter into an agreement for the construction of such bridge, upon such terms as may be mutually agreed upon, each contributing such sum towards the purchase or construction of the same as may be determined to be just and proper, and enter into contract for the construction of such bridge and to spend public funds thereon, and if deemed necessary may bond the county or city or town in the manner herein specified. The contract for letting the same and notice given to bidders, and all other matters pertaining to the construction shall be governed by the laws in force governing the construction of bridges by county commissioners in the State of Washington, provided the payments to be made on the contract by the respective municipal corporations be made direct to the contractor.

61 §41. **Franchises—Rates.** §12. The state highway board is authorized and empowered, acting jointly with any legally authorized body or public authority of any adjoining state, county or city joining in the construction of such bridge, to grant franchises for laying rails and the operation of electric street and suburban railways, and other public utilities, except steam railroads, and for the laying thereon and suspending therefrom pipes for the carrying of water, gas and other substance, and wires and cables for the conducting of electricity for telegraph, telephone, lighting, heating, power and other purposes, provided that no exclusive franchise shall be granted or given any person, firm or corporation for any use or purpose, but such bridge shall be for common use for all public service corporations or individuals, upon such terms as may be prescribed. That in the granting of any right, privilege or franchise to any person, firm or corporation for the use of said bridge for any purpose, the state highway board shall fix and prescribe the compensation to be paid for the use of such bridge, subject to the approval of the public service commission: Provided, That the rates, sums or amounts which shall be fixed in the franchise, granted to any person, firm or corporation shall be subject to change, raised or lowered, at any time by the public service commission, or any other body possessing the same powers as is now possessed by the public service commission of the State of Washington, and new or different rates or charges fixed by the public service commission, acting jointly with the other public authorities herein mentioned: Provided further, That the powers and duties given to the public service commission by the laws of the State of Washington are extended to include any bridge which may have been built by the aid of the State of Washington, and which has become the property of the State of Washington under the provisions of this act.

61 §43. **Moneys Paid Into Highway Fund.** §13. All moneys derived from any source from the use of such bridge by any persons, firm or corporation shall be paid into the public highway fund of the State of Washington.

61 §45. **All Necessary Powers.** §14. That the state highway board is hereby given power and authority to do all acts and things necessary to carry out the provisions of this act, whether mentioned herein or not, and to construct, complete and maintain any bridge which may be authorized to be constructed under the provisions of this act.

61 §47. **Definitions.** §15. The meaning of words and phrases used in this act shall, unless inconsistent with the context, be as follows: "Bridge" shall include public road, and shall include bridge, bridge approach, culvert or viaduct over the state boundary line, or over a stream, river or body of water within, at, or constituting the boundary line of the state or county. "Construct" shall include to build, repair, maintain, improve, or other like work. "Construction" shall include repair, maintenance, improvement, or other like work. "Public authorities" shall mean the county commissioners of the county or the constituted authorities of any county having control of roads and bridge construction or the council, when cities or towns are re-

ferred to. Words importing the plural number may be applied in the singular, and words importing the singular may be applied in the plural.

TITLE 69--CHILDREN.

69 §1.

No costs allowed under former law, *Pierce County v. Magnuson*, 70 W. 639.

AN ACT relating to the welfare of dependent and delinquent children, providing for the punishment of persons responsible for or contributing to their dependency or delinquency, and repealing (acts Pierce's Code, 1912, 69 §§11-41, 61) sections 1987 to 2004, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington and chapter 56 of the Laws of 1911. Approved March 22, 1913, Laws '13, ch. 160.

69 §11. **"Juvenile Court Law"—Definitions.** §1. This act shall be known as the "Juvenile Court Law" and shall apply to all minor children under the age of eighteen years who are delinquent or dependent; and to any person or persons who are responsible for or contribute to, the delinquency or dependency of such children. For the purpose of this act the words "dependent child" shall mean any child under the age of eighteen years:

(1) Who is found begging, receiving or gathering alms, whether actually begging or under the pretext of selling, or offering anything for sale; or

(2) Who is found in any street, road or public place for the purpose of so begging, gathering or receiving alms; or

(3) Who is a vagrant; or

(4) Who is found wandering and not having any home or any settled place of abode, or any proper guardianship, or any visible means of subsistence; or

(5) Who has no parent or guardian; or who has no parent or guardian willing to exercise, or capable of exercising, proper parental control; or

(6) Who is destitute; or

(7) Whose home by reason of neglect, cruelty or depravity of its parents or either of them, or on the part of its guardian, or on the part of the person in whose custody or care it may be, or for any other reason, is an unfit place for such child; or

(8) Who frequents the company of reputed criminals, vagrants or prostitutes; or

(9) Who is found living or being in any house of prostitution or assignation; or

(10) Who habitually visits any billiard room or pool room; or any saloon, or place where spiritous, vinous, or malt liquors are sold, bartered, or given away; or

(11) Who persistently refuses to obey the reasonable and proper orders or directions of its parents or guardian; or

(12) Who is incorrigible; that is, who is beyond the control and power of its parents, guardian, or custodian by reason of the vicious conduct or nature of said child; or

(13) Whose father, mother, guardian or custodian is an habitual drunkard, or do not properly provide for such child, and it appears that such child is destitute of a suitable home or of adequate means of obtaining an honest living, or who is in danger of being brought up to lead an idle, dissolute or immoral life; or where such child is without proper means of support; or

(14) Who is an habitual truant, as defined in the School Laws of the State of Washington; or

(15) Who uses intoxicating liquor as a beverage, or who uses tobacco in any form, or who uses opium, cocaine, morphine, or other similar drug, without the direction of a competent physician; or

(16) Who from any cause is in danger of growing up to lead an idle, dissolute or immoral life; or

(17) Who wanders about in the night time without being on any lawful business or occupation; or

(18) Any child under the age of twelve years found peddling or selling any article, or singing or playing on any musical instrument for gain upon the public street, or giving any public entertainment, or who accompanies, or

is used in aid of, any person so doing: Provided, That this act shall not prohibit the giving of entertainments by regularly organized schools or societies where twelve or more musical instruments are used.

The words "delinquent child" shall include any child under the age of eighteen years who violates any law of this state, or any ordinance of any town, city, county or city and county of this state defining crime; or who habitually uses vile, obscene, vulgar, profane or indecent language, or is guilty of immoral conduct; or who is found in or about railroad yards or tracks; or who jumps on or off trains or cars; or who enters a car or engine, without lawful authority.

For the purpose of this act only, all delinquent and dependent children within the state shall be considered wards of this state and their persons shall be subject to the custody, care, guardianship and control of the court as hereinafter provided.

69 §11-41.

Act repealed L. '13 ch. 160 §10.

69 §13. "Juvenile Court"—Records. §2. The superior courts in the several counties of this state shall have original jurisdiction in all cases coming within the terms of this act. In all trials under this act, any person interested therein may demand a jury trial, or the judge of his own motion, may order a jury to try the case. In counties containing thirty thousand or more inhabitants, the judges of the superior court shall at such times as they may determine, designate one or more of their number whose duty it shall be to hear all cases arising under this act. A special session to be designated as the "Juvenile Court Session" shall be provided for the hearing of such cases and the findings of the court shall be entered in a book or books kept for the purpose, and known as the "Juvenile Record," and the court may, for convenience, be called the "Juvenile Court."

69 §15. Probation Officers. §3. The court or judge designated as provided in section 2 of this act, shall appoint or designate one or more discreet persons of good character to serve as probation officers during the pleasure of the court, said probation officers to receive no compensation from the public treasury. In case a probation officer shall be appointed by any court, it shall be the duty of the clerk of the court, if practicable, to notify the said probation officer in advance when the child is to be brought before said court; it shall be the duty of said probation officers to make such investigation as may be required by the court. The probation officer or officers shall inquire into the antecedents, character, family history, environments and cause of dependency or delinquency of every alleged dependent or delinquent child brought before the juvenile court and shall make his report in writing to the judge thereof, shall be present in order to represent the interests of the child when the case is heard, shall furnish the court such information and assistance as the judge may require, and shall take such charge of the child before and after the trial as may be directed by the court. In counties containing thirty thousand or more inhabitants when it shall appear that there is a necessity for such county officer, the court may appoint one or more persons to act as probation officers, and one or more persons who shall have charge of detention rooms or house of detention, all of whom shall be paid as compensation for their services, such sums as may be fixed by the board of county commissioners, and who shall be paid as other county officers are paid; all probation officers shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests for the violation of any state law or city ordinances, relative to the care, custody, and control of delinquent and dependent children.

69 §17. Expenses Probation Officers. §4. The probation officers, and assistant probation officers, and deputy probation officers in all counties of the state shall be allowed such necessary incidental expenses as may be authorized by the judge of the juvenile court, and the same shall be a charge upon the county in which the court appointing them has jurisdiction, and the expenses shall be paid out of the county treasury upon a written order of the

judge of the juvenile court of said county directing the county auditor to draw his warrant upon the county treasurer for the specified amount of such expenses.

69 §19. **Petition.** §5. Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent or delinquent child and praying that the superior court deal with such child as provided in this act: Provided, That in counties having paid probation officers, such officers shall, as far as possible, first determine if such petition is reasonably justifiable. Such petition shall be verified and shall contain a statement of facts constituting such dependency or delinquency, as defined in section 1 of this act, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of such dependent or delinquent child. There shall be no fee for filing such petitions.

69 §21. **Summons—Guardian ad Litem—Warrant.** §6. Upon the filing of an information, or the petition, the clerk of the court shall issue a summons requiring the person having custody or control of the child, or with whom the child may be, to appear with the child at a place and time stated in the summons, which time shall not be less than twenty-four hours after service. The parents of the child, if living, and their residence is known, or its legal guardian, if there be one or if there is neither parent nor guardian, or if his or her residence is not known, then some relative, if there be one, and his residence is known, shall be notified of the proceedings; and in any case the judge shall appoint some suitable person or association to act in behalf of the child. If the person summoned as herein provided, shall fail without reasonable cause to appear and abide the order of the court, or bring the child, he shall be proceeded against as for contempt of court. In case the summons cannot be served or the parties served fail to obey same, and in any case when it shall be made to appear to the court that said summons will be ineffectual, a warrant may issue on the order of the court, either against the parent or guardian or the person having custody of the child, or with whom the child may be, or against the child itself. On return of the summons or other process, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case in a summary manner. Pending the final disposition of the case, the child may be retained in the possession of the person having charge of same, or may be kept in some suitable place provided by the city or county authorities, or by any association having for one of its objects the care of delinquent and dependent children.

69 §23. **Summons by Publication.** §7. In any case where it shall appear by the petition or verified statement, that the person standing in the position of natural or legal guardian of the person of any child, is a non-resident of this state, or that the name or place of residence or whereabouts of such person is unknown, as well as in all cases where, after due diligence, the officer has been unable to make service of the summons or notice provided for in section 6 of this act, the court may, by order, direct the clerk of the court to publish a notice four consecutive weeks in some newspaper printed in the county and having a general circulation therein. Such notice shall be directed to the parent, parents, or other person claiming the right to the custody of the child, if their names are known, and if unknown, the phrase "To Whom It May Concern" shall be used and apply to, and be binding upon, any such persons whose names are unknown. The name of the court, the name of the child (or children if of one family), the date of the filing of the petition and the date of hearing, which shall not be less than twenty days from the date of the last publication, and the object of the proceeding in general terms, shall be set forth and the whole shall be subscribed by the clerk. There shall be filed with the clerk an affidavit showing due publication of the notice and the cost of publication shall be paid by the county at not to exceed the rate paid by the county for other legal notices. The publication of notice shall be deemed equivalent to personal service upon all persons, known or unknown, who have been designated as provided in this section.

69 §25. **Commitment of Child—Support.** §8. When any child under the

age of eighteen years shall be found to be delinquent or dependent, within the meaning of this act, the court may, at any time, make an order committing the child to some suitable institution, or to the care of some reputable citizen of good moral character, or to the care of some training school or industrial school as provided by law, or to the care of some association willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent, neglected, or delinquent children: Provided, Such order may be temporary or permanent in the discretion of the court and may be revoked or modified as the circumstances of the case may thereafter require. In any case in which the court shall find the child dependent or delinquent, it may in the same or subsequent proceeding upon the parent or parents, guardian, or other person having custody of said child, being duly summoned or voluntarily appearing, proceed to inquire into the ability of such persons or person to support the child or contribute to its support, and if the court shall find such person or persons able to support the child or contribute thereto, the court may enter such order or decree as shall be according to equity in the premises, and may enforce the same by execution, or in any way in which a court of equity may enforce its decrees. If it be found, however, that the parent or parents or guardian of a dependent or delinquent child is unable to pay the whole expense of maintaining such child, and in cases where the child is committed to one of the institutions or associations above mentioned, the court may, in the order providing for the custody of such child, direct such additional amount as may be necessary to support such child to be paid from the county treasury of the county for the support of such person. The amount so ordered to be paid from the treasury of said county shall not exceed in the case of any one person, the sum of twelve dollars per month: Provided, further, That no order for the payment of all or part of the expense of support and maintenance of a dependent or delinquent child from the county treasury shall be effective for more than six months, unless a new order is secured at the expiration of that period.

69 §27. **Child in Custody.** §9. In any case where the court shall award a child to the care of any association or individual, the child shall, unless otherwise ordered, become a ward and be subject to the guardianship of the association or individual to whose care it is committed; such association shall have authority, with the assent of the court, to place such child in a family home, either temporarily or for adoption. With the written consent of the parents, or other person having the right, under the laws of this state, to dispose of a dependent or delinquent child, the court may make an order or decree of adoption transferring to any suitable person or persons, willing to receive such child, all the rights of the parent or other guardian. The order of the court made upon such consent will be binding upon the child and its parents or guardian, or other person, the same as if such person were in court and consented thereto, whether made a party to the proceedings or not. The estate or property rights of any child shall not be affected nor subject to guardianship by the provisions of this act. The jurisdiction of the court shall continue over every child brought before the court, or committed pursuant to this act, and the court shall have power to order a change in the care or custody of such child, if at any time it is made to appear to the court that it would be for the best interests of the child to make such change.

69 §29. **Hearings—Records Destroyed—Custody of Child.** §10. The hearings may be conducted in any room provided for the purpose in the court house, or building where sessions of the court are held and, as far as practicable, such cases shall not be heard in conjunction with other business of the court. At the hearing of any case involving a child, the court shall have power to exclude the general public from the room where the hearing is had, admitting thereto only such persons as may have a direct interest in the case. Any child may have a private hearing upon the question of its dependency or delinquency, and upon the request of said child, or either of its parents, or guardian, or custodian, such hearing may be had privately. An order of court adjudging a child dependent or delinquent under the provisions of this act shall in no case be deemed a conviction of crime. The pro-

bation officer's investigation record and report in each case, shall be withheld from public inspection, but such records shall be kept open to the inspection of such child, its parents, or guardian, or its attorney, and to such other persons as may secure a special order of the court therefor. Such records shall be kept as unofficial records of the court and shall be destroyed at any time in the discretion of any judge presiding in said court on or before the child shall arrive at the age of twenty-one years. After acquiring jurisdiction over any child, the court shall have power to make an order with respect to the custody, care or control of such child, or any order, which in the judgment of the court, would promote the child's health and welfare. In any case of a delinquent or dependent child, the court may continue the hearing from time to time, and may commit the child to the care or guardianship of a probation officer, duly appointed by the court, and may allow such child to remain at its own home subject to the visitation of the probation officer, such child to report to the probation officer as often as may be required and subject to being returned to the court for further proceedings whenever such action may appear to be necessary, or the court may commit the child to the care and guardianship of the probation officer, to be placed in a suitable family home, in case provision is made by voluntary contribution officer, such child to report to the probation officer as often as may be re-provision may be made for the child in a home without such payment, or the court may commit the child to a suitable institution for the care of delinquent or dependent children. In no case shall a child be committed beyond the age of twenty-one years. A child committed to such institution shall be subject to the control thereof and the said institution shall have the power to parole such child, on such conditions as may be prescribed, and the court shall have power to discharge such child from custody, whenever, in the judgment of the court, his or her reformation shall be complete; or the court may commit the child to the care and custody of some association that will receive such child, embracing in its objects the care of neglected, delinquent, and dependent children.

69 §31. Children Not to Be Locked Up.. §11. No court or magistrate shall commit a child under sixteen years of age to a jail, common lock-up, or police station; but if such child is unable to give bail, it may be committed to the care of the sheriff, police officer, or probation officer, who shall keep such child in some suitable place or house or school of detention provided by the city or county, outside the enclosure of any jail or police station, or in the care of any association willing to receive it and having as one of its objects the care of delinquent, dependent or neglected children. When any child shall be sentenced to confinement in any institution to which adult convicts are sentenced, it shall be unlawful to confine such child in the same building with such adult convicts, or to bring such child into any yard or buildings in which such adult convicts may be present.

69 §33. Justices Shall Certify Cases to Superior Court. §12. When, in any county where a court is held as provided in §2 of this act, a child under the age of eighteen years is arrested with or without warrant, such child may, instead of being taken before a justice of the peace or police magistrate, be taken directly before such court; or if the child is taken before a justice of the peace or police magistrate, it shall be the duty of such justice of the peace or police magistrate to transfer the case to such court, and the officer having the child in charge shall take the child before that court, and in any such case, the court may proceed to hear and dispose of the case in the same manner as if the child had been brought before the court upon petition as hereinbefore provided. In any such case, the court shall require notice to be given and investigation to be made as in other cases under this act, and may adjourn the hearing from time to time for such purpose. If, upon investigation, it shall appear that a child has been arrested upon the charge of having committed a crime, the court, in its discretion, may order such child to be turned over to the proper officers for trial under the provisions of the criminal code.

69 §35. **Detention House.** §13. Counties containing more than fifty thousand inhabitants shall, and counties containing a lesser number of inhabitants may, provide and maintain at public expense, a detention room or house of detention, separated or removed from any jail, or police station, to be in charge of a matron, or other person of good character, wherein all children within the provisions of this act shall, when necessary, be sheltered.

69 §37. **Liberal Construction—Limitations.** §14. This act shall be liberally construed to the end that its purpose may be carried out, to-wit: that the care, custody and discipline of a dependent or delinquent child as defined in this act shall approximate as nearly as may be that which should be given by its parents, and in all cases where it can be properly done, the dependent or delinquent child as defined in this act shall be placed in an approved family and may become a member of the family, by adoption or otherwise. No dependent or delinquent child as defined in this act shall be taken from the custody of its parent, parents or legal guardian, without the consent of such parent, parents or guardian, unless the court shall find such parent, parents or guardian is incapable or has failed or neglected to provide proper maintenance, training and education for said child; or unless said child has been tried on probation in said custody, and has failed to reform, or unless the court shall find that the welfare of said child requires that his custody shall be taken from said parent or guardian. In this act, the words used in any gender shall include all other genders, and the word "county" shall include "city and county," the plural shall include the singular and singular shall include the plural.

69 §38. **Modification of Orders.** §15. Any order made by the court in the case of a dependent or delinquent child may at any time be changed, modified or set aside, as to the judge may seem meet and proper.

69 §39. **Fees Prohibited.** §16. No fees shall be charged or collected by any officer or other person for filing petition, serving summons, or other process under this act.

69 §40. **Encouraging Delinquency—Penalty.** §17. In all cases where any child shall be dependent or delinquent under the terms of this act, the parent or parents, legal guardian or person having custody of such child, or any other person who shall by any act or omission, encourage, cause or contribute to the dependency or delinquency of such child shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine not exceeding one thousand dollars, or imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and the juvenile court shall have jurisdiction of all such misdemeanors: Provided, however, That the court may suspend sentence for a violation of the provisions of this section and impose conditions as to conduct in the premises of any person so convicted, and make such suspension to depend upon the fulfillment by such person of such conditions, and, in case of the breach of such conditions, or any thereof, the court may impose sentence as though there had been no such suspension. The court may also, as a condition of such suspension, require a bond in such sum as the court may designate, to be approved by the judge requiring same, to secure the performance by such persons on the conditions imposed by the court on such suspension. Such bond shall, by its terms, be made payable to the State of Washington, and any moneys received for a breach thereof shall be paid into the county treasury.

69 §40.

Carnal knowledge of child by person not in loco parentis is within statute, State v. Plastino, 67 W. 374.

In prosecution under L. 09 ch. 153, conviction was sustained, holding that act was separate act, State v. Williams, 73 or 74

W. Both acts were repealed and substituted by the act of which this section is a part.

Offense charged in the language of the statute is sufficient, State v. Williams, 73 or 74 W.

69 §41. **Visitation of Custodians.** §18. In each county, the judge presiding over the juvenile court sessions, as defined in this act, may appoint

a board of four reputable citizens, who shall serve without compensation, to constitute a board of visitation, whose duty it shall be to visit as often as twice a year all institutions, societies and associations within the county receiving children under this act, as well as all homes for children or other places where individuals are holding themselves out as caretakers of children, also to visit other institutions, societies and associations within the state receiving and caring for children, whenever requested to do so by the judge of the juvenile court: Provided, The actual expenses of such board may be paid by the county commissioners when members thereof are requested to visit institutions outside of the county seat, and no member of the board shall be required to visit any institutions outside the county unless his actual traveling expenses shall be paid as aforesaid. Such visits shall be made by not less than two members of the board, who shall go together or make a joint report. The board of visitors shall report to the court from time to time the condition of children received by or in charge of such institutions, societies, associations, or individuals. It shall be the duty of every institution, society, or association, or individual receiving and caring for children to permit any member or members of the board of visitation to visit and inspect such institution, society, association or home where such child is kept, in all its departments, so that a full report may be made to the court.

69 §61.

Act repealed L. '13 ch. 160 §10.

TITLE 77—CITIES AND TOWNS.

77 §1.

Title sufficient to include police courts, *State ex Fugita v. Milroy*, 71 W.

77 §13.

Applies to own government and not to sovereign franchise power, *Dolan v. P. S. L. & P. Co.*, 72 W.

77 §19.

Act constitutional, title sufficient, *Pacific American Fisheries v. Whatcom County*, 69 W. 291.Extends boundaries of a city to include adjoining tide lands so as to authorize taxation of property located on such lands, *Pacific American Fisheries v. Whatcom County*, 69 W. 291.

77 §21.

Levy on town for its former debt sustained, *Forsyth v. Seattle*, 73 W.

77 §43.

Old officers act until new are elected and qualify, *State ex Sylvester v. Sup'r Court*, 64 W. 594.

77 §57.

Act mandatory, *Benson v. Hoquiam*, 67 W. 90.

77 §71.

Note on preceding page of Code.

77 §83.

Authorizes construction of a bridge in a street, *Knickerbocker Co. v. City of Seattle*, 69 W. 336.Change of grade under terms of railway franchise is public use, *Spokane v. Thompson*, 69 W. 650.City may construct gridiron wharf at the end of a street across a harbor area, *Chlopeck Fish Co. v. Seattle*, 64 W. 315.Cl. 5—Authority strictly construed—city cannot issue additional bonds, *Murphy v. Spokane*, 64 W. 681.Anti-treating ordinance valid, *Tacoma Kelsel*, 68 W. 685.Authorizes ordinance regulating "weighing, measuring etc.," *Seattle v. Goldsmith*, 73 W.; *Spokane v. Arnold*, *Id.*

77 §133.

Requirements reasonable, *Collins v. Spokane*, 64 W. 153.Does not extend the requirements of notice to persons or torts other than those contemplated by city charter. *Wolpers v. Spokane*, 66 W. 633.77 §269 *passim* §289.

Repealed L. '13, ch. 103, §9.

AN ACT relating to police courts in cities of the second class and cities operating under the provisions (41 §519) of chapter 116 of the Session Laws of 1911, and repealing (77 §§269-285, 289) §§7656, 7657, 7658, 7659, 7660, 7661, 7662, 7664, and 7666 of Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 18, 1913. Laws '13, ch. 103.

77 §269. **Police Court, Cities Second Class and Commission Government.**

§1. A police court is hereby established in cities of the second class and those cities operating under and pursuant to the provisions of (77 §519) chapter 116 of the Session Laws of 1911, which court shall always be open for business except on non-judicial days, and upon such days may transact such business only as may be provided for by law.

77 §271. **Jurisdiction.** §2. The police judge in such cities shall have exclusive jurisdiction over all offenses defined by any ordinance of the city, and all other actions brought to enforce or recover any license, penalty or forfeiture declared or given by any such ordinance, and full power to forfeit bail bonds and issue execution thereon, and full power to forfeit cash bail, and full power and authority to hear and determine all causes, civil or criminal, arising under such ordinances, and pronounce judgment in accordance therewith: Provided, That for the violation of a criminal ordinance, no greater punishment shall be imposed than a fine of one hundred dollars or imprisonment not to exceed thirty days, or by both such fine and imprisonment. In the trial of actions brought for the violation of any city ordinance, no jury shall be allowed. All civil or criminal proceedings before such police judge and judgments rendered by him, shall be subject to review in the superior court of the proper county by a writ of review or appeal. The procedure, in case of appeal or by writ of review, shall be in accordance with the provisions now governing appeals in justice's courts as near as may be.

77 §273. **Process Runs Throughout State.** §3. All criminal process issued by such police judge shall be in the name of the State of Washington, and run throughout the state, be directed to the chief of police, marshal, or other police officer of any city, or to any sheriff or constable in the state, and shall be served by him.

77 §275. **Style of Actions—No Change of Venue.** §4. All prosecutions for the violation of any city ordinance shall be conducted in the name of the city, and may be upon the complaint of any person, and no change of venue shall be allowed from the police judge of such cities in action brought for the violation of city ordinances.

77 §277. **Fees—To Be Paid In.** §5. In all civil and criminal actions arising from the violation of city ordinances tried by such police judge, he shall charge up as costs in each case the same fees as are charged by justices of the peace for like services in every action. All fees so charged and collected by, and all fines and forfeits paid to such police judge shall belong to, and be paid over by him weekly to the city treasurer, who shall issue his receipt therefor.

77 §279. **Records—Reports.** §6. The governing body of the city shall furnish for use of the police court, all necessary dockets, books of record, blanks and blank forms which are deemed necessary to the proper administration of said court. The police judge shall, the last Saturday of each month make a full report of all cases tried in his court for that month in which the city may be interested and file the same with the city clerk.

77 §281. **Judge Pro Tem.** §7. In the event of the police judge's inability to act, or during any temporary absence, or if he should be disqualified, the mayor shall appoint from among the practicing attorneys and qualified electors of the city, a police judge pro tempore, who, before entering upon the duties of such office, shall take and subscribe an oath as other judicial officers, and while so acting, he shall have all the powers of the police judge: Provided, however, Such appointment shall not continue for a longer period than the absence or inability of the police judge. Such police judge pro tempore shall receive compensation for such services at the rate of five dollars per day, to be paid by the city.

77 §283. **Judge Shall Be Attorney—Election.** §8. No person shall be eligible to hold the office of police judge who is not a practicing attorney under the laws of this state. In all cities of the second class, except such as have a commission form of government, a police judge shall be elected annually at the general municipal election and shall hold his office until his successor is elected and qualified.

AN ACT authorizing cities of the second class under 18,000 inhabitants to create a publicity fund and to levy taxes for that purpose, and providing for the manner of the expenditure of such fund. Approved March 11, 1913. Laws '13 ch 57.

77 §292. **Publicity Fund.** §1. Any city of the second class under 18,000 inhabitants of the State of Washington is hereby empowered to create a

special fund to be known as a publicity fund, to be used exclusively for exploiting and advertising the general advantages and opportunities of such city and vicinity. Whenever the city council or other governing body in any such city shall decide to create a publicity fund under this act, such council or governing body of such city shall do so by ordinance, and thereupon the council or other governing body of such city shall have authority to levy annually for the creation and maintenance of such fund a special tax on all of the taxable property of such city, not exceeding two and one-half mills on the dollar of the assessed valuation of the taxable property of such city. All moneys derived from such tax levy shall be paid into such publicity fund and shall be devoted exclusively to the use herein stated, and shall be paid out only upon warrants drawn against the same and signed by at least two members of the publicity board hereinafter provided for.

77 §292a. Expenditure of Fund. §2. All expenditures from said fund shall be made under the direction of a publicity board of three members to be nominated by a recognized commercial organization of such city, then appointed by the mayor and confirmed by the council or other legislative body of the city by two-thirds vote; the members of such board shall serve without remuneration and must be actual residents and voters in such city and property owners therein; and the recognized commercial organization herein referred to must be representative and public and devoted exclusively to the work usually devolving on such organizations, and must have no less than two hundred bona fide dues paying members, and must be incorporated under the laws of the State of Washington; if there be more than one organization meeting these qualifications in any city, then the oldest of such organizations shall be the one recognized within the meaning and provisions of this act. Members of the publicity board may be appointed in the manner herein provided any time after this act goes into effect and the first members appointed shall hold office until the second Monday in January following their appointment, or until their successors shall have been appointed and qualified, and thereafter the members of such publicity board shall be appointed at the first regular meeting in December of the city council or other governing body of such city and the terms of office of such members shall be for one year beginning on the second Monday in January after their appointment and until their successors are appointed and qualified. Members of the board, duly appointed and confirmed, shall qualify prior to the beginning of their term by taking the oath of office and by giving a bond to the city in the sum of \$1,000, conditioned upon the faithful performance of their duties. Any member of the board shall be removed by the mayor on request of the recognized commercial organization making the nomination, as hereinbefore stated, when it is shown that a majority vote of the entire membership of such recognized organization favoring such removal has been cast at any regular meeting of such organization. No part of said publicity fund shall ever be paid to any newspaper, magazine or periodical published within the city or county where such city is situated, for advertising or write-ups or for any other service or purpose whatsoever, and no part of such fund shall be expended for the purpose of making any exhibits at any fair, exposition or the like.

77 §307.

to municipal elections. Hillyard v. Board

With 167 §221; power given to council of Com'r's, 69 W. 423.
of cities of the third class applies only

77 §323. Powers of Council Enumerated. §117. The city council of such city shall have power---

Ordinances: 1. To pass ordinances not in conflict with the constitution and laws of this state or of the United States;

Real Property: 2. To purchase, lease or receive such real estate and personal property as may be necessary or proper for municipal purposes (and to purchase and plat land for the purpose of cemeteries and to provide by ordinance for the regulation thereof), to control, dispose of and convey the same for the benefit of the city: Provided, That they shall not have the power to sell or convey any portion of any waterfront, but may rent such waterfront for a term not exceeding ten years, and may improve part

of such waterfront by building inclines or wharves for the accommodation of shippers, and to charge and collect for the use of the same such amounts as will compensate the city for the expenses incurred and the repairs needed from time to time; to prevent and regulate the running at large of any or all domestic animals within the city limits or any part thereof, and to cause the impounding and sale of any such animals;

Water Supply: 3. To contract for supplying the town with water for municipal purposes, or to acquire, construct, repair and manage pumps, aqueducts, reservoirs or other works necessary or proper for supplying water for the use of such town or its inhabitants or for irrigating purposes therein;

Highways. 4. To establish, build and repair bridges, to establish, lay out, alter, keep open, open, widen, vacate, improve and repair streets, sidewalks, alleys, squares and other public highways and places within the city, and to drain, sprinkle and light the same; to remove all obstructions therefrom; to establish the grades thereof; to grade, plank, pave, macadamize, gravel and curb the same, in whole or in part, and to construct gutters, culverts, sidewalks and crosswalks therein or upon any part thereof; to cause to be planted, set out and cultivated shade trees therein; and generally to manage and control all such highways and places;

Sewerage: 5. To establish, construct and maintain drains and sewers, and shall have power to compel all property owners on streets along which sewers shall have been constructed to make proper connections therewith, and to use the same for proper purposes, and in case the owners of property on such streets shall fail to make such connections within the time fixed by such council, they may cause such connections to be made and to assess against the property in front of which such connections are made the costs and expenses thereof;

Fire Department: 6. To provide fire engines and all other necessary or proper apparatus for the prevention and extinguishment of fires;

Poll Tax: 7. To impose on and collect from every male inhabitant between the ages of twenty-one and fifty years an annual street poll tax not exceeding two dollars, and no other road poll tax shall be collected within the limits of such city: Provided, That any member of a volunteer fire company in such city shall be exempt from such tax;

Dog Licenses: 8. To impose and collect an annual license not exceeding two dollars on every dog owned or harbored within the limits of the city (and may provide for the killing of all dogs not duly licensed found at large);

Property Taxes: 9. To levy and collect annually a property tax, which shall be apportioned as follows: For the general fund, not exceeding sixty cents on each one hundred dollars; for street fund, not exceeding thirty cents on each one hundred dollars, and for sewer fund, not exceeding ten cents on each one hundred dollars. The levy for all purposes for any one year shall not exceed one dollar on each one hundred dollars of the assessed value of all real and personal property within such city;

Liquor Licenses: 10. To license, for purposes of regulation and revenue, all and every kind of business, including the sale of intoxicating liquors, authorized by law, and transacted and carried on in such city, and all shows, exhibitions and lawful games carried on therein and within one mile of the corporate limits thereof, to fix the rate of license tax upon the same, and to provide for the collection of the same by suit or otherwise;

River Improvement. 11. To improve rivers and streams flowing through such city, or adjoining the same, to widen, straighten and deepen the channel thereof, and remove obstructions therefrom; to improve the waterfront of the city, and to construct and maintain embankments and other works to protect such city from overflow; to purify and prevent the pollution of streams of waters, lakes or other sources of supply, and for this purpose shall have jurisdiction over all streams, lakes or other sources of supply, both within and without the city limits. Such city shall have power to provide by ordinance and to enforce such punishment or penalty as the city council may deem proper for the offense of polluting or in any manner obstructing or interfering with the water supply of such city or source thereof;

City Buildings. 12 To erect and maintain buildings for municipal purposes.

Franchises. 13. To permit, under such restrictions as they may deem proper, the laying of railroad tracks, and the running of cars drawn by horses, steam or other power thereon, and the laying of gas, steam heating and water pipes in the public streets, and to construct and maintain, and to permit the construction and maintenance of telegraph, telephone and electric lines therein;

Ward Divisions: 14. In its discretion to divide the city, by ordinance, into a convenient number of wards, not exceeding six, to fix the boundaries thereof, and to change the same from time to time: Provided, That no change in the boundaries of any ward shall be made within sixty days next before the date of such general municipal election, nor within twenty months after the same shall have been established or altered. Whenever such city shall be so divided into wards, the city council shall designate by ordinance the number of councilmen to be elected from such ward, apportioning the same in proportion to the population of such wards. And thereafter the councilmen so designated shall be elected by the qualified electors resident in such ward or by a general vote of the whole city, as may be designated in such ordinance: Provided further, That when additional territory is added to the city that it thereafter, by act of the council, be annexed to contiguous wards without affecting the right to re-district at the expiration of twenty months after the last previous division;

Policemen: 15. To appoint and remove such policemen and other appointed officers as they may deem proper, and to fix their duties and compensations;

Punishments. 16. To impose fines, penalties and forfeitures for any and all violations of ordinances, and for any breach or violation of any ordinance to fix the penalty by fine or imprisonment, or both, but no such fine shall exceed three hundred dollars nor the term of such imprisonment exceed the term of three months;

Prison Labor: 17. To cause all persons imprisoned for violation of any ordinance to labor on the streets, or other public property or works within the city.

Fire Limits: 18. To establish fire limits, with proper regulations;

Libraries: 19. The city council may appropriate from the general fund an amount not exceeding one-fourth of one mill of the taxable property of the city for the purpose of establishing and maintaining a public library;

Ill-Fame and Gambling: 20. To punish the keepers and inmates and lessors of houses of ill-fame, gamblers and keepers of gambling tables;

All Powers: 21. To make all such ordinances, by-laws, rules, regulations and resolutions, not inconsistent with the constitution and laws of the State of Washington, as may be deemed expedient to maintain the peace, good government and welfare of the corporation and its trade, commerce and manufactures, and to do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter, and to exact and enforce within the limits of such city all other local, police, sanitary and other regulations as do not conflict with general laws. R. & B. §7685; L '13 ch 108.

77 §363.

Where councilmen were landowners under a reclamation project and subscribed to a contract between the company and the city, and thereby obtained extra water free, such contract was void. *Gantenbein v. City of Pasco*, 71 W.

Applies where mayor is president of a corporation contracting with the city, *State ex rel Gladwin v. Cheney*, 67 W. 151.

77 §389.

Cl. 13—City has authority to grant railroad franchise—rights of abutters, *State ex Sylvester v. Superior Court*, 64 W. 594.

Subd. 3, a lease for a water supply and warrants issued therefor, made by the

council only, and without submission to the voters, are void ab initio, *State ex rel. Craig v. Newport*, 70 W. 286.

77 §505.

The secretary of war having consented to the erection of a temporary bridge, a city may build a permanent bridge. *In re Westlake Ave.*, 66 W. 277.

77 §519.

Act constitutional, *State ex rel. Hunt v. Tausick*, 64 W. 69.

77 §637.

Supplants former laws regarding "general funds." *State ex rel. Polson v. Hardcastle*, 68 W. 548.

77 §641. Tax Levy for Funds. §3. Such municipal corporations shall levy and collect annually a property tax for the payment of current expenses, not exceeding ten mills on the dollar; a tax for the payment of indebtedness (if any indebtedness exist) not exceeding six mills on the dollar, and all monyes collected from the taxes levied for payment of current expenses shall be credited and applied by the treasurer to "current expense fund"; and all moneys collected from the taxes levied for the payment of indebtedness shall be credited and applied to a fund to be designated as the "indebtedness fund"; Provided, That any such municipal corporation having at present an existing indebtedness it may levy and collect annually a property tax for the payment of current expenses, not exceeding fifteen mills on the dollar. R. & B. §5131; L '13 ch 92.

77 §677. Security for Deposits. §2. Before any such designation shall become effectual and entitle the treasurer to make deposits in such bank or banks, the bank or banks so designated shall, within ten (10) days after the same is filed with the comptroller, file with the comptroller of such city a contract with said city wherein said bank shall agree to pay not less than one and one-half per centum on the cash daily balances of all municipal funds kept by such treasurer in said bank, while acting as such depository; such payments to be made monthly to said city while said deposit continues in said depository; said contract shall run to said city and be in such form as shall be approved by the mayor and corporation counsel; and such bank shall also file with the comptroller of such city a surety bond or bonds to such city to the amount of the deposits of such city that may be carried in such bank, conditioned for the prompt payment thereof on checks duly drawn by the said treasurer; or in lieu thereof shall deposit with the said comptroller good and sufficient municipal, school district, county or state bonds or warrants, United States bonds, first mortgage railroad bonds listed on the New York Stock Exchange, or local improvement bonds or warrants, or public utility bonds or warrants, issued by or under the authority of any municipality of the state for water, power or light plants or maintenance thereof upon which principal or interest is not in default at the time of such deposits. Such surety bonds or securities shall be in such form as shall be approved by the corporation counsel of such city and the sufficiency of such surety bonds or such securities shall be approved by the mayor and comptroller of such city. When such bonds have been duly approved and filed with the comptroller of said city, he shall immediately certify to the city treasurer the amount of bonds or securities filed by such bank or banks, whereupon the city treasurer shall be authorized to make deposits in such bank up to the amount of surety bonds or securities, so filed. R. & B. §5079; L '13, ch. 118.

77 §689.

City has discretion to improve street wholly at expense of property benefited. Powell v. Walla Walla, 64 W. 582.

City may provide for construction piecemeal or in separate ordinances, Gantenbein v. Pasco, 73 W.

Act '05 p. 62 did not preclude other methods of assessment, Olympia v. Turpin, 70 W. 581.

77 §695.

Cities had no extraterritorial power under former law, Edmonds Land Co. v. Edmonds, 66 W. 201.

77 §699. Council Shall Order. §6. Whenever the public interest or convenience may require, the council, or other legislative authority of any such city or town, is hereby authorized and empowered to order the whole or any part of the streets, avenues, lanes, alleys, boulevards, park drives, parkways, public squares, and places within any such city or town to be graded or regraded, planked or replanked, paved or repaved, piled or repiled, capped or recapped, or otherwise improved, and to order sidewalks, drains, sewers, and all sewer appurtenances, culverts, bulkheads, retaining walls, water mains, hydrants or appurtenances, curbing and crosswalks, street lighting systems, together with the cost, and expense of furnishing electrical energy to said street lighting systems, auxiliary water systems, dikes and embankments, bridges and trestles and approaches thereto, or other local improvement whatsoever to be constructed, reconstructed, repaired or renewed

therein, and to order the planting, setting out, cultivating, maintaining and renewing of shade or ornamental trees and shrubbery thereon; and to order any and all work to be done which shall be necessary to complete any such improvement; and to levy and collect special assessments to pay the whole or any part of the cost and expense of any such improvement. The city may require uniform setting out, planting, cultivating, maintenance and renewal of shade and ornamental trees and shrubbery on any street or highway. Any local improvement payable, in whole or in part, by special assessments, which shall include a charge for the cost and expense of furnishing electrical energy to any system of street lighting shall be initiated only upon petition signed by the owners of two-thirds of the lineal frontage upon the improvement to be made and two-thirds of the area within the limits of the proposed improvement district. L '13 ch 131.

77 §699.

City cannot contract with part of owners to make improvements and be eliminated from assessment, *Turner Inv. Co. v. Seattle*, 70 W. 201.

Benefit to railroad property a legislative question, *Great Nor. Ry. v. Seattle*, 73 W.

Council properly provided for distributing system prior to vote on supply, *Matthews v. Ellensburg*, 73 W.

77 §707.

Lots omitted will be presumed not benefited, *Aumiller v. No. Yakima*, 73 W.

Estimate does not preclude council from levying to extent of benefits, *Inner-Circle Co. v. Seattle*, 69 W. 508.

Notice waived where parties appear and protest, *Chandler v. Puyallup*, 70 W. 632.

Apportionment to leasehold and fee, *Seattle Mattress etc. Co. v. Seattle*, 69 W. 666.

Notice to owner's agent good, *Olympia v. Turpin*, 70 W. 581.

77 §711.

Does not limit assessment in city of first class, *Gerlach v. Spokane*, 68 W. 589.

Two assessable fronts on lots regardless of ownership under charter—res judicata waived—additional assessment by agreement, *Gerard v. Seattle*, 73 W.

Objection cannot be made to excess of 50% if city pays excess—valuation based on entire district, *Hapgood v. Seattle*, 69 W. 497.

77 §729.

Owner may defend against greater assessment though acquiesced in, *Chehalis v. Cory*, 64 W. 367.

Objection that assessment exceeds legal limit is precluded unless duly made,

Rucker Bros. v. Everett, 66 W. 366.

Various defects disregarded but estimate cannot be raised, *Collins v. Ellensburg*, 68 W. 212.

77 §731.

Appeal bond by part of appellants for all good, *Gerlach v. Spokane*, 68 W. 589.

Objections must be appealed from to be available, *Norman v. Spokane*, 67 W. 630.

No appeal if no objection made before confirmation, *Ferrall v. Spokane*, 73 W.

77 §771.

Burden is on person attacking reassessment—leasehold interest in state lands held not reassessable, *Inner-Circle Co. v. Seattle*, 69 W. 508.

Reassessment on all when part invalid because property damaged—damaged property reassessed, *Hapgood v. Seattle*, 69 W. 497, 508.

77 §779.

Call for bids need not specify payment in bonds, *Matthews v. Ellensburg*, 73 W.

77 §853.

Assessment district need not be limited to the lands actually filled, *Martin v. Olympia*, 69 W. 28.

77 §863.

Decisions of council as to assessments can, unless appealed from, be set aside only for exorbitant overvaluation, fraud or arbitrary action, *Martin v. Olympia*, 69 W. 28.

77 §897.

Leasehold interest subject to assessment, *Trimble v. Seattle*, 64 W. 102.

77 §§1009-1013.

Repealed by 77 §§1181-87, *Rowe v. James*, 71 W.

Amendatory—AN ACT authorizing cities and towns to construct, purchase, condemn and purchase, acquire, add to, maintain, conduct and operate certain public utilities, construct, acquire and operate public markets, and cold storage plants for the sale and preservation of certain supplies and provisions; and amending (77 §1073) section 8005 of *Remington & Ballinger's Annotated Codes and Statutes of Washington*. Approved March 8, 1913. Laws '13 ch 45.

77 §1073. Ownership of Public Utilities Generally—Navigation Saved.

§1. That any incorporated city or town within the state be, and hereby is, authorized to construct, condemn and purchase, purchase, acquire, add to, maintain, conduct and operate water works, within or without its limits, for the purpose of furnishing such city or town and the inhabitants thereof, and any other persons, with an ample supply of water for all uses and purposes, public and private, including water power and other power derived therefrom, with full power to regulate and control the use, distribution and price

thereof; to construct and maintain systems of sewerage, and systems and plants for refuse collection and disposal, with full jurisdiction and authority to manage, regulate and control the same within and without the limits of the corporation; to construct, condemn and purchase, purchase, acquire, add to, maintain and operate works, plants and facilities for the preparation and manufacture of all such stone or asphalt products or compositions or other materials which may be used in street construction or maintenance, together with the right to use the same, and also to fix the price of and to sell the same for use in the construction of municipal improvements of such city or town; to construct, acquire and operate public markets and one or more cold storage plants for the sale and preservation of butter, eggs, meats, fish, fruits, vegetables, and other perishable provisions; and to construct, condemn and purchase, purchase, acquire, add to, maintain and operate works, plants and facilities for the purpose of furnishing such city or town and the inhabitants thereof, and any other persons, with gas, electricity and other means of power and facilities for lighting, heating, fuel and power purposes, public and private, with full authority to regulate and control the use, distribution and price thereof, together with the right to handle and sell, or lease, any meters, lamps, motors, transformers and equipment or accessories of any and every kind, necessary and convenient for the use, distribution and sale thereof; to authorize the construction of such plant or plants by others for the same purpose, and to purchase such gas, electricity or power from others either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within such city or town, and to regulate and control the use and price thereof; to construct, condemn and purchase, purchase, acquire, add to, maintain, operate or lease cable, electric and other railways within the limits of such city or town for the transportation of freight and passengers above, upon or underneath the ground, with full authority to regulate and control the use and operation thereof, and to fix, alter, regulate and control the fares and rates to be charged thereon; and for the purposes aforesaid, it shall be lawful for any city or town in this state to take, condemn, and purchase, purchase, acquire and retain water from any public or navigable lake or water course precolating or subterranean, or any underflowing water within the state, and, by means of aqueducts or pipe lines, to conduct the same to said city or town; and such city or town is hereby authorized and empowered to erect and build dams or other works across or at the outlet of any lake or watercourse in this state for the purpose of storing and retaining water therein up to and above high water mark; and for all the purposes of erecting such aqueducts, pipe lines, dams, or waterworks or other necessary structures in storing and retaining water, as above provided, or for any of the purposes provided for by this act, such city or town shall have the right to occupy and use the beds and shores up to the high water mark of any such water course or lakes, and to acquire the right by purchase, or by condemnation and purchase, or otherwise, to any water, water rights, easements or privileges named in this act, or necessary for any of said purposes, and any such city or town shall have the right to acquire by purchase or by condemnation and purchase any lands, properties or privileges necessary to be had to protect the water supply of such city or town from pollution: Provided, That should private property be necessary for any such purposes or for storing water above high water mark, such city or town may condemn and purchase, or purchase and acquire such private property: And provided further, That no such dam or other structure shall impede, obstruct or in any way interfere with public navigation of such lake or watercourse.

77 §1073.

"High water mark" defined, *Austin v. lock v. Seattle*, 69 W. 178.
Bellingham, 69 W. 677.

A city may not, without condemnation, and distributing system, *Matthews v. El-permanently dam a body of water so as lensburg*, 73 W.
 to raise its level beyond ordinary high wa- 77 §1075.

ter, *Austin v. Bellingham*, 69 W. 677.

Bonds to purchase or build parallel lines illegal, cannot be counted in determining

of street railways are related objects, *Tul-*

lock v. Seattle, 69 W. 178.

City may provide separately for supply

and distributing system, *Matthews v. El-*

lensburg, 73 W.

77 §1075.

Ballots improperly cast, or rejected as

illegal, cannot be counted in determining

the total vote cast, *State ex rel, Short v. Freeman v. Centralia*, 67 W. 142.

Claussen, 72 W.

77 §1085.

Construction work may be done piece-meal, *Gantenbein v. Pasco*, 73 W.

77 §1157.

Vacation—non-user—abandonment, see notes to 441 §83.

77 §1181.

Person not abutting cannot complain,

Provides exclusive method for vacating streets, *Seattle v. Hinckley*, 67 W. 273, *Houston v. Tacoma*, 67 W. 92.

Street may be vacated for private or semipublic use, *Freeman v. Centralia*, 67 W. 142.

Repealed by 77 §§1009-13, *Rowe v. James*, 71 W.

77 §1193. **Waterways, Vacation of.** §1. Whenever any waterway heretofore established under the authority of the laws of this state, or any portion of such waterway, shall not have been excavated, or shall not be in use for the purposes of navigation, or shall no longer be required in the public interest to exist as a waterway, such waterway or portion thereof may be vacated by written order of the commissioner of public lands of the state of Washington whenever he shall be requested so to do by ordinance or resolution of the city council of the city in which such waterway is situate, in whole or in part, or, in case such waterway is situate, in whole or in part, in a port district organized under the laws of the state of Washington, whenever he shall be requested so to do by resolution of the port commission of such port district; and upon the making of such order the waterway or portion thereof shall thereupon be deemed to be and shall be thereby vacated: Provided, however, that if the waterway or portion thereof so vacated be navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of such resolution or ordinance, together with a copy of said order of the commissioner of public lands certified to by him, shall be submitted to the secretary of war and chief of engineers of the United States for their approval, and if they approve the same such waterway or portion thereof shall thereupon be deemed to be and shall be thereupon vacated. L '13, ch. 171.

77 §1197. **Lands Not Taken for Streets to Be Sold.** §3. Should such city fail to make such selection within such time, or having within such time made such selection, the title of the remaining portions of such waterway so vacated shall vest in the state of Washington, unless the same be situate within the territorial limits of a port district created under the laws of the state of Washington, in which event such title shall vest in said port district. If subsequent to such vacation, the vacated waterway or portion of waterway shall be embraced within the limits of a port district created under the laws of the state of Washington, the title to such portions thereof as shall then remain undisposed of by the state shall vest in such port district. Such title so vesting shall be subject to any railroad or street railway crossings existing at the time of such vacation. L '13, ch. 171.

77 §1198. **Preference Rights Annulled.** §3. All preference rights of purchase created by the act of which this act is amendatory are hereby annulled. L '13, ch. 171.

77 §1198a. **Waterways Excepted.** §4. The provisions of this act shall not apply to any waterway or portion of waterway which forms, or by improving same may be made to form, a connection between a river or another waterway and any tidal water. L '13, ch. 171.

AN ACT relating to cities of the second or third class providing for the drainage and filling of low lands, swamp lands, tide lands or tide flat within their borders and in effecting such fill and drainage and to secure material therefor, empowering such cities to construct and control shipping canals and artificial waterways for public use and to acquire, hold and lease lands abutting upon said canals or waterways for the purpose of erecting public docks, wharves and bridges and to lease said lands to private persons or concerns for manufacturing, shipping and other commercial purposes, and providing for the payment of such improvement by creating special improvement districts assessing the cost of such improvements to the land benefited thereby from the general expense fund or both of such methods and extending to such cities the right of eminent domain for the purpose of carrying into effect the pro-

visions of this act, for the taking or damaging of property and providing a method of making compensation therefor. Approved February 28, 1913. Laws '13, ch. 16.

77 §1319. Power to Fill Tide, Etc., Lands—Harbor Facilities—Payment.

§1. Whenever the city council or commission of any city of the second or third class in this state shall deem it necessary or expedient on account of the public health, sanitation, the general welfare, or other cause, to fill or raise the grade or elevation of any marsh lands, swamp lands, tide lands or lands commonly known as tide flats, or any other lands situated within the limits of such city and to clear and prepare said lands for such filling, such city shall have power so to do; and for the purpose of filling and raising the grade or elevation of such lands, and to secure material therefor and to provide for the proper drainage thereof after such fill has been effected, the city council or commission of such city may, if it deems it advisable so to do, acquire rights-of-way (and where necessary or desirable, may vacate, use and appropriate streets and alleys for such purposes) and lay out, build, construct and maintain over and across such low lands, canals or artificial waterways of at least sufficient width, depth and length to provide and afford the quantity of earth, dirt and material required to complete such fill and with the earth, dirt and material removed in digging and constructing such canals and waterways, fill and raise the grade or elevation of such marsh lands, swamp lands, tide lands or tide flats; and such canals or waterways shall be constructed of such width and depth (provided that all the earth, dirt and other suitable material removed in constructing the same shall be used to fill the low lands as herein provided) as will make them available, convenient and suitable to provide water frontage for landings, wharves and other conveniences of navigation and commerce for the use and benefit of the city and the public; and when such canals or waterways shall have been constructed as herein provided, such city may construct and maintain the necessary bridges over and across the same; such canals or waterways shall be forever under the control of such city and shall be and become public thoroughfares and waterways for the use and benefit of commerce, shipping, the city and the public generally. The expense of making such improvement and in doing, accomplishing and effecting all the work provided for in this act, including the cost of making compensation for property taken or damaged, and all other cost and expense incidental to such improvement, shall be assessed to the property benefited, except such amount of such expense as the city council or commission, in its discretion, may direct to be paid out of the current or general expense fund. Proceedings for the filling and for changing the grade and elevation of any such low lands may be had in the manner provided in this act.

77 §1321. Ordinance—Hearing—Local Assessment. §2. Whenever the city council or commission of any such city shall desire to make any improvement contemplated in the next preceding section, such city council or commission shall provide therefor by ordinance and unless such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessment upon the property benefited, compensation therefor shall be made from any general or special funds of such city applicable thereto. If such ordinance shall provide that such improvement shall be paid for wholly or in part by special assessments upon property benefited, the proceedings for the making of such special assessment shall be as hereafter provided. Such ordinance shall specify the boundaries of the proposed improvement district and shall describe the lands which it is proposed to assess for said improvement, and shall provide for the filling of such low lands and shall outline the general scheme or plan of such fill. Where any parcel of land within the boundaries of such proposed improvement district shall, prior to the initiation of the improvement, be wholly filled to the proposed grade or elevation of the proposed fill, such parcel of land may be excluded from the lands to be assessed when in the opinion of the city council or commission justice and equity require its exclusion. The boundaries of any improvement district may be altered so as to exclude land therefrom at any time up to the levying of the assessment as in this act provided, but such changing of the boundaries shall be by ordinance. Upon the introduction of an ordinance provid-

ing for such fill, if the city council or commission shall desire to proceed with the filling of such low lands as in this act contemplated, said city council or commission shall fix a time, not less than ten days, in which protests against said fill may be filed in the office of the city clerk. Thereupon it shall be the duty of the clerk of said city to publish in the official newspaper of said city in at least two consecutive issues thereof before the time fixed for the filing of such protests, a notice of the time fixed for the filing of protests, together with a copy of the proposed ordinance as introduced. If protests against the proposed fill by the owners of more than half of the area of land situated within the proposed filling district exclusive of streets, alleys and public places, be filed on or before the date fixed for such filing, the council shall not proceed further with such work unless two-thirds of the members of the said council shall vote to proceed with such work, and if any such city is operating under the commission form of government composed of three commissioners, said commission shall not proceed further with such work except by a unanimous affirmative vote of all the members thereof; if such commission be composed of five members, then at least four affirmative votes thereof shall be necessary before proceeding with such work. If no such protest shall be filed or if such protest be filed and two-thirds of the councilmen shall vote to proceed with such work or in cases where such cities are operating under the commission form of government, such commissioners shall vote unanimously or four out of five commissioners as above mentioned shall vote to proceed with such work, the said city council or commission shall at such meeting or in a succeeding meeting proceed to pass the proposed ordinance for the work, with such amendments and modifications as to the said city council or commission of said city may seem proper. By the provisions of such ordinance the local improvement district shall be called "Filling District No....." which shall include all property subject to assessment, and which it may be proposed to assess, and which may be properly included under the provisions of this act.

77 §1323. **Eminent Domain—Procedure.** §3. Whenever an ordinance shall be passed as in the preceding section of this act provided, and it shall appear that in making of such improvements so authorized, private property shall be taken or damaged thereby, the city shall file a petition in the superior court of the county in which such city is situated, in the name of the city, praying that just compensation to be made for the property to be taken or damaged for the improvement specified in such ordinance, be ascertained by a jury or by the court, in case a jury be waived, and all of the provisions of (171 §31) an act of the legislature of the State of Washington, approved March 13, 1907, entitled: "An act to enable cities of the first, second and third classes and having a population of over one thousand five hundred inhabitants to exercise the right of eminent domain for the taking and damaging of land and property for public purposes, providing a method for making compensation therefor and providing for special assessments in certain cases upon property benefited," and acts amendatory thereof shall be applicable to the proceeding had in the superior court under the provisions of this act for the ascertainment of the compensation to be made for the taking and damaging of property, except in so far as the same may be inconsistent with this act. The filling of unimproved and uncultivated low lands of the character mentioned in section one of this act shall not be considered as a damaging or taking of such lands. The damage, if any, done to cultivated lands or growing crops thereon, or to buildings and other improvements situated within the district proposed to be filled, shall be ascertained and determined in the manner above provided; but no damage shall be awarded to any property owner for buildings or improvements placed upon lands included within said district after the publication of the ordinance referred to in section two, defining the boundaries of the proposed improvement district: Provided, That the city shall after the passage of such ordinance, proceed with said improvement with due diligence. Where the improvement is to be made at the expense of the property benefited, no account shall be taken of benefits by the jury or court in assessing the amount of compensation to be made to the owner of any property within such district, but such compensation shall be assessed without regard to benefits to the end that said prop-

erty for which damages may be so awarded, may be assessed the same as other property within the district for its just share, and proportion of the expense of making said improvement, and the fact that compensation has been awarded for the damaging or taking of any parcel of land shall not preclude the assessment of such parcel of land for its just proportion of said improvement as hereinafter provided.

77 §1325. **Plans Required.** §4. At the time of the initiation of the proceedings for any improvement as contemplated by this act or at any time afterward, the city council or commission of such city shall cause plans and specifications for said improvement to be prepared and shall cause an estimate to be made of the cost and expense of making said improvement, including the cost of supervision and engineering, abstractor's fees, interest and discounts and all other expenses incidental to said improvement, including an estimate of the amount of damages for property taken or damaged, which plans, specifications and estimates shall be approved by the city council or commission.

77 §1327. **Assessment Roll—Method of Assessment.** §5. When such plans and specifications shall have been prepared and such estimate of the cost and expense of making such improvement shall be made and adopted by the city council or commission, as set out in the preceding section, and when an estimate has been made of the compensation to be paid for property damaged or taken, either before or after such compensation shall be ascertained in the said superior court as hereinbefore provided, the city council or commission through the proper officer or officers, of such city, shall cause an assessment roll to be prepared containing a list of all the property within said improvement district which it is proposed to assess for such improvements, together with the names of the owners, if known, and if unknown, the property shall be assessed to an unknown owner, and opposite each description shall be set the amount assessed to such description. When so ordered by the said city council or commission, the entire amount of compensation paid or to be paid for property damaged or taken, including all of the costs and expenses incidental to the condemnation proceedings and together with the entire cost and expense of making the improvement may be assessed against the property within the district subject to assessment, but the city council or commission may order any portion of such costs paid out of the current or general expense fund of the city, in their discretion. The several parcels of land located within said improvement district to be assessed for such improvement shall be assessed according to and in proportion to surface area, one square foot of surface to be the unit of assessment: Provided, That where any parcel of land was wholly or partially filled by the owner prior to the initiation of the improvement an equitable deduction for such filling or partial filling may be allowed. The cost and expense incidental to the filling of the streets, alleys and public places within said assessment district shall be borne by the private property within such district subject to assessment when so ordered by the city council or commission. When the assessment shall be payable in installments, the assessment roll when equalized, as hereinafter provided, shall show the number of installments and the amounts thereof. The assessment herein provided may be made payable in any number of equal annual installments not exceeding fifteen in number.

77 §1329. **Equalization of Roll.** §6. When such assessment roll shall be so prepared it shall be filed in the office of the city clerk and thereupon it shall be the duty of the city clerk to give notice by publication in at least three issues of the official paper that such roll is on file in his office and that at a date mentioned in said notice, which shall be at least twenty days after the date of the first publication thereof, the city council or commission of such city will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same. At the time specified in said notice, the city council or commission of said city shall sit as a board of equalization to equalize the said roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council or commission shall have power as such board of equalization to hear, consider and determine objections and protests against any

assessment levied under the provisions of this act and shall have power as such board to make such alterations and modifications in the assessment roll as justice and equity may require.

77 §1331. Appeal. §7. Any person who has made objections to the assessment as equalized, shall have the right to appeal from the equalization as made by the city council or commission to the superior court of the county in which such city may be situated. Such appeal shall be made by filing a written notice of appeal with the clerk of such city within ten days after the equalization of said assessment by the council or commission, and said notice shall describe the property and the objections of such appellant to such assessment; and the appellant shall also file with the clerk of the superior court aforesaid within ten (10) days from the time of taking such appeal a copy of said notice, appeal, assessment and proceedings thereon, certified by the clerk of such city, together with a bond to such city conditioned to pay all costs that may be awarded against appellant in such sums not less than two hundred dollars and with such security as shall be approved by the clerk of such court, and the case shall be docketed by the clerk of such court in the name of the person taking such appeal as plaintiff, and such city or town as defendant. Said cause shall then be at issue and shall be tried immediately by such court as in the case of equitable causes, except that no further pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment in so far as the same affects the property of the appellant with respect to which the appeal was taken, from which judgment an appeal shall lie to the supreme court as in other causes.

77 §1333. Lien—Collection. §8. From and after the equalization of the roll, the several assessments in such roll contained shall become a lien upon the real estate described in such roll, and shall remain such lien until paid, and such lien shall take precedence of all other liens against such property, except the lien of general taxes. The assessments herein provided for shall be collected by the same officers and enforced in the same manner as now provided by law or which may be hereafter enacted for the collection and enforcement of local assessments for street improvements of the class herein described, and all of the provisions of existing laws and ordinances relative to the enforcement and collection of local assessments for street improvements including the certification of delinquent assessments to the county treasurer and the issuance and foreclosure of certificates of delinquency, shall be applicable to the assessments made pursuant to this act.

77 §1335. Warrants—Bonds. §9. When the improvement contemplated by this act shall be ordained to be made upon the immediate payment plan, the city council or commission shall provide for the payment of the same by the issuance of local improvement fund warrants against the local improvement district, which warrants shall be paid only out of the funds derived from the local assessments in the district. When such improvement shall be ordered to be made upon the bond installment plan, the city council or commission shall provide for the issuance of bonds against the improvement district as hereinafter provided.

77 §1337. Issuance of Bonds. §10. When it is desired to issue bonds against any such improvement district, the city council or commission shall have full authority to provide for the issuance of such bonds. Such bonds may be in such denominations as the city council or commission may provide, and shall bear such rate of interest as the city council or commission may fix, not exceeding, however, eight per centum per annum; interest shall be paid annually and said bonds shall become due and payable at such time not exceeding fifteen years from the date thereof, as may be fixed by the said council or commission and shall be payable out of said local assessment district funds. If so ordered by the council or commission, such bonds may be issued in such a way that different numbers of said bonds may become due and payable at different intervals of time, or they may be so issued that all of the bonds against said district shall mature together. The city, however, may reserve the right to call or mature any bond on any interest paying date when sufficient funds are on hand for its redemption; but bonds shall be called in numerical order. The city council or commission of any

such city shall have authority for and on behalf of such city to guarantee the payment of the whole or any part of the bonds so issued against any such local improvement district, but such guarantees on the part of the city shall only be made by ordinance duly enacted, the passage of which ordinance shall require the vote of not less than two-thirds of the councilmen and the approval of the mayor, or three commissioners in case the governing body consists of three commissioners, or four where such city is governed by five commissioners. The city council or commission shall have power to enact all ordinances necessary for the issuance of the bonds herein provided for, and to give full force and effect to this act.

77 §1339. **Damage Fund Warrants.** §11. The city council or commission of any such city shall have power to negotiate sufficient warrants or bonds against any such local improvement district at a price not less than ninety-five per cent of their par value as may be necessary to raise sufficient money to pay any and all compensation which may be awarded for property damaged or taken in the judicial proceedings hereinbefore mentioned, including the costs of such proceedings; but in lieu of so doing, the city council or commission shall have power to negotiate current or general expense fund warrants at par to raise funds for the payment of such compensation and expenses in the first instance, but in that event the current or general expense fund shall be reimbursed out of the first moneys collected in any such local assessment district or realized from the negotiation or sale of local improvement warrants or bonds.

77 §1341. **Rates of Interest.** §12. The local assessments herein provided for shall bear interest at such rate as may be fixed by the council or commission, not exceeding the rate of eight per centum per annum from and after the expiration of thirty days after the equalization of the assessment roll and shall bear such interest after delinquency as may be provided by general ordinance of the city: Provided, That such assessment shall bear interest at the rate of fifteen per cent per annum from and after the date of the certification of such assessments to the county treasurer of the county, as in cases of local street assessments. Warrants drawn against any such local improvement districts shall bear interest from the date of issuance at the rate of eight per centum per annum.

77 §1343. **Contract—Changing Assessment.** §13. The contract for the making of any improvement as contemplated by this act may be let either before or after the making up of the equalization of the assessment roll, and special fund warrants or bonds may be issued against said local improvement district, either before or after the equalization of the roll as in the judgment of the council or commission may best subserve the public interest. When the assessment roll is made up and equalized, based in whole or in part upon an estimate of the cost of the improvement and it shall be later found that such estimate was too high, the excess shall be rebated pro rata to the property owners on the assessment roll, such rebates to be deducted from the last installment, or installments, when the assessment is upon the installment plan. When it is found that the estimated cost was too low and that the actual bona fide cost of the improvement is greater than the estimate, the city council or commission after due notice and a hearing, as in case of the original equalization of the roll, may add the required additional amount to the assessment roll to be apportioned among the several parcels of property upon the same rules and principles as if it had been originally included, except that such additional amount shall be added to the last installment of such assessment in case such assessment be upon the installment plan. The same notice shall be required for adding to the assessment roll in this manner as is required for the original equalization of the roll, and the property owner shall have the right of appeal.

77 §1345. **Warrants to Contractor.** §14. The city council or commission in its discretion may provide in letting the contract for any such improvement, that the contractor shall accept special fund warrants or local improvement bonds against the local improvement district within which such improvement is to be made, in payment for the contract price of such work, and that such warrants or bonds may be issued to the contractor from time to time as the work progresses, or the city council or commission may nego-

tiate such special fund warrants or bonds against such local improvement district at not less than ninety-five cents in money for each dollar of warrants or bonds, and with the proceeds of such sales pay the contractor for such work and pay the other costs of such improvement.

77 §1347. **Funds May Be Loaned.** §15. Whenever money shall accumulate in any such improvement fund and is likely to lay idle awaiting the maturity of the bonds against the district, the city council or commission, under proper safeguards, may invest such money temporarily, or may borrow the same temporarily, at a reasonable rate of interest, but when so invested or borrowed, the city shall be responsible and liable for the restoration to such fund of the moneys so invested or borrowed from any such fund, with interest thereon, whenever required for the redemption of bonds maturing against such district.

77 §1349. **Reassessment.** §16. In case any assessment made under the provisions of this act should be found to be invalid for any cause or in case the same should be set aside for any reason in any judicial proceeding, then a reassessment may be made and all laws now in force or which may be hereafter enacted relative to the reassessment of local assessments, for street or other improvements, shall, as far as practicable, be applicable hereto.

77 §1351. **Dimensions of Waterways—Control—Leases—Charges.** §17. When the filling of any marsh land, swamp land, tide land or tide flats shall result in the construction and completion of any canal or water way as contemplated in this act, the same shall not be constructed less than three hundred feet wide at the top between the shore lines and with sufficient slope to the sides or banks thereof to as nearly as practicable render bulkheadings or other protection against caving or falling in of said sides or banks unnecessary and of sufficient depth to meet all ordinary requirements of navigation and commerce. Such canal or waterway shall be and remain under the control of the city except as herein provided, and immediately upon the completion of the same the city shall establish outer wharf and dock lines lengthwise of said canal or water way on both sides thereof in such manner and position that not less than two hundred feet of the width thereof shall always remain open between such lines and beyond and between which lines no right shall ever be granted to build docks, wharves or other obstructions except bridges; nor shall any permanent obstruction to the free use of the channel so laid out between said wharf or dock lines, excepting bridges, their approaches, piers, abutments and spans, ever be permitted but the same shall be kept open for navigation. Such city shall have the right to lease the area so created between the said shore lines and the wharf and dock lines so established or any part, parts or parcels thereof during times when the use thereof is not required by the city, for periods not exceeding thirty years, to private individuals or concerns for dock, wharf, warehouse or manufacturing purposes at such annual rate or rental per lineal foot of frontage on the canal or water way as it may deem reasonable. The rates of wharfage, dockage and other charges to the public which such lessee may impose shall be reasonable; and the city council or commission may regulate such rates. The lease so granted by the city shall never be transferred or assigned without the consent of the city council or commission having been first obtained; and when at the time of granting such leases the city shall own the land abutting upon the shore line and outside of such canal or water way at any given point then the said area lying between the shore line and the said wharf or dock line at that point shall never be leased unless an equal frontage of said abutting property immediately adjoining the same is leased at the same time for the same period to the same individual or concern: Provided, That such city shall never lease to any individual or concern more than four hundred (400) lineal feet of frontage of such area lying between the shore lines and the wharf or dock lines and no individual or concern shall ever hold or occupy by lease, sublease or otherwise more than the said four hundred (400) lineal feet of frontage of such area: Provided, however, That any individual or concern may acquire by lease or sublease whatever additional number of lineal feet of frontage of such area may in the judgment of the city council or commission be necessary for the use of such individual or concern, upon

petition therefor to the city council or commission signed by not less than five hundred (500) resident free holders of said city.

77 §1353. May Acquire Harbor Facilities at Any Time—Leases. §18. While acquiring the rights-of-way for such canals or water ways or at any time thereafter such city shall have the right to acquire for its own and for public use, by purchase, gift, condemnation or otherwise, and pay therefor out of the current expense fund of such city or by bonding the city or by pledging revenues to be derived from rents and issues of the lands so acquired or through such other means as may be provided by law, lands abutting upon the shore lines or right-of-way of such canals or water ways to a distance, depth or width of not more than three hundred (300) feet back from the banks or shore lines of such canals or waterways on either side or both sides thereof, or not more than three hundred (300) lineal feet back from and abutting on the outer lines of such rights-of-way on either side or both sides of such rights-of-way, and such area of such abutting lands as the council or commission may deem necessary for its use for public docks, bridges, wharves, streets and other conveniences of navigation and commerce and for its own use and benefit generally; and when the said cities are not using said lands they shall have the right to lease the said abutting lands so acquired or such parts or parcels thereof as may be deemed for the best interest and convenience of navigation, commerce and public interest and welfare, to private individuals or concerns for terms not exceeding thirty years each at such annual rate or rental as the city council or commission of such city may deem just, proper and fair, for the purpose of erecting docks and wharves for wholesale and retail warehouses and for general commercial purposes and manufacturing sites, but the said city shall never convey or part with title or control of the abutting lands above mentioned and so acquired other than in the manner herein specified: Provided, That any lease or leases granted by such city on such abutting lands shall never be transferred or assigned without the consent of the city council or commission having been first obtained. And such city shall never lease to any individual or concern more than four hundred (400) lineal feet of canal or water way frontage of said land and no individual or concern shall ever hold or occupy by lease, sublease, or otherwise more than the said four hundred (400) lineal feet of said frontage: Provided, however, That any individual or concern may acquire by lease or sub-lease whatever additional frontage of such abutting land may be in the judgment of the city council or commission necessary for the use of such individual or concern, upon petition presented to the city council or commission therefor signed by not less than five hundred (500) resident free holders of such city; and at the time that the city shall lease to any individual or concern any of such abutting lands such individual or concern must likewise for the same period of time lease all of the area between the shore line and the wharf and dock line of such canal or water way lying contiguous to and immediately in front of the abutting land so leased.

77 §1355. Tax Levy. §19. For the purpose of raising revenues to carry on any project under this act, excepting the actual filling of such marsh lands, low lands, swamp lands, tide lands or tide flats, but including funds for the payment for lands taken, purchased, acquired or condemned and the expenses incident to the acquiring thereof, or any other cost or expenses incurred by the city under this act other than the cost of actually filling such lands, any such city is hereby empowered and authorized to levy an annual tax of not exceeding three (3) mills on each dollar of assessed valuation of all property within the city. The city council or commission of any such city may create a fund into which all moneys so derived from taxation and moneys derived from rents and issues of the lands acquired under and by virtue of this act shall be paid and against which special fund warrants may be drawn or negotiable bonds issued to meet expenditures under this act.

77 §1357. When Work to Be Done by Contract. §20. When such city shall undertake any improvement authorized by this act and the expenditures required for the same exceed the sum of \$500.00, the same shall be done by contract and shall be let to the lowest responsible bidder, after due notice, under such regulation as may be prescribed by ordinance: Provided,

That the city council or commission may reject all bids presented and readvertise in their discretion, or, if in the judgment of the city council or commission such work can be performed, or supplies or materials furnished by the city independent of contract, cheaper than under the bid submitted, it may after having so advertised and examined the bids, cause such work to be performed or supplies or material to be furnished independent of contract. This section shall be construed as a concurrent and cumulative power conferred on such cities and shall not be construed as in any wise repealing or affecting any law now in force relating to the performing, execution and construction of public works.

77 §1359. **Eminent Domain.** §21. The right of eminent domain is hereby extended to any such city of the second or third class for the condemnation of lands and other property, either within or without the corporate limits of such city, for the purpose of filling and draining such marsh lands, swamp lands, low lands, tide lands or tide flats and in so doing constructing said canals or water ways as contemplated in this act; and every such city shall have the right to appropriate real estate or other property for the rights-of-way of such canals or water ways or whatever property is necessary to be appropriated or damaged for the construction thereof, and the filling and draining of such marsh lands, low lands, swamp lands, tide lands or tide flats and for other uses provided for in this act; and all the provisions of (171 §31) an act of the legislature of the State of Washington, approved March 13, 1907, entitled "An act to enable cities of the first, second and third classes and having a population of over fifteen hundred inhabitants to exercise the right of eminent domain for the taking and damaging of land and property for public purposes, providing a method for making compensation therefor and providing for special assessments in certain cases upon property benefited" and acts amendatory thereof shall be applicable and used in appropriating and damaging lands as contemplated by this section except in so far as the same may be inconsistent with this act; and the right of eminent domain authorized by this section shall be exercised in the same manner and under the same procedure as is authorized by the said act of the legislature of the State of Washington approved March 13, 1907, and acts amendatory thereof.

77 §1361. **Laws Saved.** §22. This act shall not be construed as repealing or in any wise affecting (77 §853) chapter 147 of the laws of 1909 or any other existing laws relative to the making of any such improvements as are embraced within this act, but this act shall be considered as concurrent with such existing laws.

TITLE 81—CIVIL PROCEDURE.

81 §1.

Citation of §1509 in title should be 81 §1895.

81 §7.

Broker who deposited client's money in his own name, as agent, and delivered his checks thereon as agent, may sue in his own name for the amount of such checks, *Goodfellow v. First Nat. Bank*, 71 W.

81 §15.

Does not limit the right of action to minor heirs, *Rochester v. Seattle, R. & S. R. R. Co.*, 67 W. 545.

Claim against city for injury to wife may be verified by either spouse, *James v. Seattle*, 68 W. 359.

Separate actions brought by children for their father's death are properly consolidated, *Benson v. English Lumber Co.*, 71 W.

In action by administrator for benefit of widow there must be competent evidence that the widow authorized the action, *Koloff v. C. M. & P. S. Ry.*, 71 W.

There can be no recovery by parents for the death of a minor son, where there is no dependence, absolute or partial, although they were receiving his wages, *Kanton v. Kelly*, 65 W. 614.

Action survives the death of the injured person only as against the wrongdoer, and not against his personal representatives, *Rinker v. Hurd*, 69 W. 257.

81 §17.

Does not include an action under 81 §17, *Kanton v. Kelly*, 65 W. 614.

81 §17.

Wealth of parents does not prevent recovery of substantial damages, *Atkeson v. Jackson Est.*, 72 W.

81 §21.

Action may be brought within 3 years after she became twenty-one years old, *Gates v. Shaffer*, 72 W.

81 §31.

Assignee of executory contract took title free of counterclaim, *King v. West Grocery Co.*, 72 W.

A claim by persons purchasing land, under a contract procured by fraud, for the return of money paid under the contract, is enforceable in the name of the assignee, *Bell v. Jovita Heights Co.*, 71 W.

Assignee may sue to obtain relief against fraud, *Conaway v. Co-Operative Homebuilders*, 65 W. 39.

81 §35.

Transfer of property being condemned does not abate action, *Oregon etc. R. & N. Co. v. Wilkinson*, 188 Fed. 363.

81 §37.

Applies to female as well as male decedents, *Thompson v. S. R. & S. Ry.*, 71 W.

There must be dependence to recover, *Kanton v. Kelly*, 65 W. 614.

81 §41.

Court may bring in assignor where defendant sets up equitable defense in action on assigned account, *State ex Adjustment Co. v. Court*, 67 W. 355.

81 §53.

Does not apply where land is held under a mistake as to the true boundary line, *Johnson v. Ingram*, 63 W. 554.

Action held to be one to recover real property and not a trust, *Lehman v. Heuston*, 73 W.

Statute runs against attorney in trust arrangement, *Hotchkin v. McNaught-Collins Imp. Co.*, 67 W. 206.

Statute does not run against estate in remainder, *McDowell v. Beckham*, 72 W.

Adverse possession under mistaken belief makes title, *Wissinger v. Reed*, 69 W. 685.

81 §55.

Guaranty of note does not terminate with note, *Ekre v. Cain*, 66 W. 659.

81 §63.

Applies where the gravamen of an action respecting written contracts is fraud, *Conaway v. Co-operative Homebuilders*, 65 W. 39.

Subd. 4 applies in an action by a trustee of a bankrupt corporation on a purchase of its own stock in fraud of creditors, *Union Trust Co. v. Amery*, 67 W. 1.

Action accrues when lands flooded not when dam built, *Brisky v. Leavenworth etc. Co.*, 68 W. 386.

Alienation of affections, *Mullins v. Mullins*, 66 W. 351.

81 §65.

Cited in sustaining plea of the statute, *Dabney v. Stearns*, 73 W.

Does not repeal 501 §245, *Seattle Land & Imp. Co. v. Blum*, 71 W.

An action to cancel a tax deed barred, although the tax judgment on which it was based was void for want of jurisdiction, *Fish v. Fear*, 64 W. 414; *Baylis v. Kerrick*, 64 W. 410.

Applies where a tax deed is issued under a judgment of tax foreclosure voidable for fraud, *Fleming v. Stearns*, 66 W. 655.

Action to cancel a tax deed issued before the passage of act brought within three years after the date of the deed but not within one year after the passage of act cannot be maintained, *Hoko River Boom Co. v. Fairservice*, 69 W. 357.

81 §73.

Another provision as to claims against estates, 409 §349.

81 §77.

Where a corporate officer kept books, crediting himself with salary and charging himself with cash received, the account was a "mutual open account," *Blom v. Blom Codfish Co.*, 71 W.

81 §79.

Action barred where the complaint was served but not filed in time, *Petree v. Washington Water Co.*, 64 W. 636.

An action by a private party deemed commenced from the time of filing the complaint, *Blinn v. Grindle*, 71 W.

81 §81.

The rule that a foreign corporation cannot avail itself of the statute of limitations does not apply in a foreign indemnity company's bond, providing that any suit thereon must be commenced within six months, *Ilse v. Aetna Ind. Co.*, 69 W. 484.

81 §83.

Facts held not to show insanity to toll statute in will contest, *In re Siebs Estate*, 70 W. 374.

81 §101.

A right of action arising in another state between nonresidents of this state is not barred when it is not barred by the statutes of the state where it arose, *McElroy v. Gates*, 64 W. 249.

81 §103.

Actions to reform deed is transitory, *Rosenbaum v. Evans*, 63 W. 506.

Does not apply in divorce actions, *Cotton v. Cotton*, 69 W. 130.

81 §107.

Purchase of lumber is transaction of business, *Strandall v. Alaska Lum. Co.*, 73 W.

81 §109.

Garnishee may change venue if no trial in principal action, *State ex Stewart & H. Co. v. Court*, 67 W. 321.

81 §111.

Upon application for a change of venue plaintiff may controvert the defendant's allegation as to residence, *Critler v. Jacobson & Lindstrom*, 66 W. 322.

81 §113.

One change prohibition will not lie for second change for prejudice of judge, *State ex Moore v. Court*, 70 W. 362.

Application for change of venue is timely if made on the first appearance of applicant in the proceedings, *Bedolfe v. Bedolfe*, 71 W.

Motion is timely where accused was not represented by counsel when the cause was set for trial, and counsel made the motion at their first appearance, *State ex rel. Jones v. Gay*, 65 W. 629.

Application too late where the party submits himself to the jurisdiction of the court, and first sought a continuance only for the convenience of counsel, *State ex rel. Lefebvre v. Clifford*, 65 W. 313.

Affidavit must be brought to notice of court; shall not delay progress of litigation, *State ex Nelson v. Yakey*, 64 W. 511.

Judge can only deny the application on the ground that it was not timely, *Garvey v. Skamser*, 69 W. 259.

The court to which a case is sent on change of venue acquires full jurisdiction, subject to statutory remedies for change of venue, *State ex rel. Moore v. Court*, 70 W. 362.

After a petition to vacate a judgment has been transferred the judge has no jurisdiction to hear the petition on its merits, *Garvey v. Skamser*, 69 W. 259.

81 §131.

Second summons with amended complaint served is good as first service, *Roznik v. Becker*, 68 W. 63.

81 §143.

Service good on any agent of foreign corporation, *Barrett Mfg. Co. v. Kennedy*, 73 W.

Corporation presumed to do business where sued—bond executed in county basis of action, *Hayworth v. McDonald*, 67 W. 496.

81 §143 Subd. 8.

Service on vice-president and trustee may be sufficient, *Silvain v. Benson*, 68 W. 286.

81 §147.

Service good for tax foreclosure, *Dabney v. Stearns*, 73 W.

81 §149.

Statutes providing for service by publication must be strictly complied with, *Lutkens v. Young*, 63 W. 452.

Mailing of esummons to foreign corporation is not service on co-partnership with same name, *Yarbrough v. Pugh*, 63 W. 140.

81 §151.

Service held sufficient, *Phillips v. Tompson*, 73 W.

81 §159.

Omission of reference to first publication not fatal, *Old Republic Min. Co. v. Ferry County*, 69 W. 600.

81 §161.

Does not require showing of nonresidence, *Roznik v. Becker*, 68 W. 63.

81 §163.

Applies in action to forfeit realty contract and quiet title, *Smith v. Stiles*, 68 W. 345.

81 §165.

Judgment against joint debtor valid where other joint debtor is a non-resident and no joint property shown, *Brownfield v. Holland*, 63 W. 86.

81 §173.

Purchasers from parties to the action only are bound by *lis pendens*, *Burwell v. Smith*, 63 W. 1.

Lis Pendens notice must be filed at or after the time of commencement of the action, *Burwell v. Smith*, 63 W. 1.

81 §179.

Mailing in time to reach destination sufficient, *Nor. Pac. R. Co. v. Smith*, 68 W. 269.

81 §181.

Service of a statement of facts by mail is completed when the copy is deposited in the post office, *State ex rel. Palmer Mountain Co. v. Court*, 63 W. 442.

81 §187.

Court may extend time for filing exceptions to referee's report or permit amendments *Pederson v. Parke*, 68 W. 482.

Time improperly extended to file motion for new trial but court having inherent power to review evidence, held not error, *Sylvester v. Olson*, 63 W. 285.

81 §209.

It is in the discretion of the trial court to dismiss an action for want of prosecution, *Loring v. Maltbie*, 64 W. 336.

81 §211.

An order for the transfer of a cause on the ground of prejudice of the presiding judge can only be vacated after a hearing had upon notice, *Garvey v. Skamser*, 69 W. 259.

81 §235.

Facts actually or presumably within the personal knowledge of the pleader cannot be denied for want of knowledge, *Olympia v. Turpin*, 70 W. 581.

81 §237.

Assignor of account may be brought in if defense made against account, *State ex Adjustment Co. v. Court*, 67 W. 355.

81 §257.

Does not apply to actions under the Factory Act, *Mathis v. Western Furniture Co.*, 72 W.

81 §265.

Allegation of conveyance need not show writing, *Wilson Case Lum. Co. v. Mountain Timber Co.*, 200 Fed. 181.

81 §273.

Statute applied in, *Seattle R. & S. Co. v. Seattle*, 190 Fed. 75.

81 §275.

Publishing plaintiff's photograph with story of father's crime is not libel, *Hillman v. Star Pub. Co.*, 64 W. 691.

81 §281.

Damage for venereal disease should be joined with divorce, *Schultz v. Christopher*, 65 W. 496.

Breach of warranty in sale and damages by runaway horse may be joined, *Mullerleile v. Brandt*, 64 W. 280.

Where employer maintained a hospital by fees retained from wages, causes of action for personal injuries and for failure to use diligence in carrying plaintiff to the hospital, may be joined, *Harding v. Ostrander Co.*, 64 W. 225.

Actions against the same defendant to recover moneys paid under contracts obtained by fraud may be joined in a suit by an assignee of the various claimants, *Bell v. Jovita Heights Co.*, 71 W.

81 §287.

Larceny of "check" sustained on proof of indorsed "certificate of deposit," *State v. Garland*, 65 W. 666.

Time of making oral contract held not variance, *Cholokovitch v. Porcupine Gold Min. Co.*, 73 W.

Where evidence not within the issues was received over objection that it tended to vary the terms of a written contract, but not that it was not within the issues, and the court directed that the pleadings be amended accordingly, there was no material variance, *Stocking v. Boyer*, 70 W. 615.

81 §303.

Plaintiff did not allege directly that misrepresentations preceded contract, complaint sufficient, *Bell v. Jovita Heights Co.*, 71 W.

Supreme court will regard pleadings amended to conform to proof admitted without objection, *Godfrey v. Olson*, 68 W. 59.

81 §305.

Proper to allow defendant to withdraw an answer and demur on the ground that the complaint was not filed within time.

under the statute of limitations, where the objection was not available at the time the issue was made up, *Petree v. Washington Water Co.*, 64 W. 636.

81 §351.

Bond liable only to extent of judgment, *Ihrig v. Bussell*, 68 W. 70.

Under 81 §§355, 365, an action for conversion may be maintained against an officer holding property in an action to which claimant had not been made party, *Nasser v. Gaston*, 70 W. 685.

81 §355.

Action maintained on redelivery bond because property deteriorated—partial return, *Hallidie Mach. Co. v. Whidby Island Co.*, 73 W.

81 §369.

Supreme court stayed injunction on appeal, *Campbell Lum. Co. v. Deep River Co.*, 68 W. 431.

81 §371.

Will not lie when adequate remedy by forcible entry and detainer, *Cogswell v. Cogswell*, 70 W. 184.

81 §391.

Neither formal entry by the clerk nor service necessary to render injunction operative, *State ex rel, Curtiss v. Erickson* 66 W. 639.

Injunctive order held binding from the time of announcement of the court that a restraining order would issue, *State v. Erickson*, 66 W. 639.

81 §415.

Attachment against corporation will not hold property of co-partnership of same name, *Yarbrough v. Pugh*, 63 W. 140.

81 §423.

Bond is condition precedent to issuance, *Wentworth v. Moore*, 64 W. 451.

Failure to condition bond for payment of "all costs" is amendable and not jurisdictional defect, *Roznik v. Becker*, 68 W. 63.

81 §455.

Applies only to such judgments as may be satisfied by a general execution, *Clifford v. Pateros Transfer Co.*, 71 W.

81 §587.

Court gave oral instructions, held error, *State v. Burnam*, 71 W.

A supplemental oral instruction is error, *Raynor v. Tacoma R. & P. Co.*, 70 W. 133.

It is discretionary with the court to give a further instruction after argument of counsel, *State v. Brache*, 63 W. 396.

Merely relates to the time of taking exceptions to instructions, the manner thereof still being controlled by 81 §675, *State v. Peebles*, 71 W.

Exceptions to instructions taken immediately after jury retired are timely, *State v. Nels*, 68 W. 599.

Adding oral explanation to written instructions not error, *State v. Marion*, 68 W. 675.

81 §597.

In criminal case, court properly refused request that jury go to bedside of witness, *State v. Mallahan*, 66 W. 21.

Applies to condemnation proceedings, *Sedro-Woolley v. Willard*, 71 or 72 W.

81 §637.

Special findings construed to support general verdict, *Cameron v. Stack-Gibbs Lum. Co.*, 68 W. 539.

Special findings must be inconsistent, to defeat general verdict, *Campbell v. Jones*, 73 or 74 W.

81 §671.

General exceptions to findings and conclusions are sufficient, *Peterson v. Parke*, 68 W. 482.

81 §685.

Court may order stenographic notes to be produced, *State ex Griffith v. Court*, 71 W.

Referred to another judge when trial judge and counsel cannot agree, *Heath v. Seattle Taxicab Co.*, 69 W. 69.

Filing of proposed statement of facts must precede service, *State ex rel, Palmer Mountain Co. v. Court*, 63 W. 442.

81 §693.

Statement stricken where not filed within four months, *Williams v. Spokane*, 67 W. 368.

81 §697.

Instructions given wholly in writing, and filed, may be taken to supreme court over the certificate of the clerk, and need not be embodied in a bill of exceptions, *Hofreiter v. Schwabland*, 72 W.

81 §725.

Judgments upon an award are subject to review and attack in the same manner as are other judgments, *McElroy v. Hooper*, 70 W. 347.

81 §727.

Courts have inherent power to grant new trials—discretion, *Sylvester v. Olson*, 63 W. 285.

81 §743.

Presumption in favor of judgment is stronger than that arising from erroneous instruction, *Morgan v. Bankers Trust Co.*, 63 W. 476.

81 §745.

In action by second sub-contractor against contractor and first sub-contractor, the first sub-contractor may plead against the contractor, *Maher & Co. v. Fernandis*, 70 W. 250.

81 §749.

Motion may be urged on appeal, *Linck v. Matheson*, 63 W. 593.

Court has power to grant a voluntary dismissal without prejudice, *Williams v. Spokane*, 64 W. 484.

81 §753.

Dismissal for failure to prove case is bar, *Michel v. White*, 64 W. 341.

81 §757.

Rule of court may be waived—discretion—sickness as excuse, *Swasey v. Mikelsen*, 65 W. 411.

Default judgment set aside where service made on person unfamiliar with legal procedure, *Spoar v. Spokane Turn Verein*, 64 W. 208.

81 §779.

Judgment creditors acquired a valid lien on debtors' real estate from entry of judgment, *Konnerup v. Milspaugh*, 70 W. 415.

When judgment not entered at once, nolle prosequi as to one of defendant joint tortfeasors does not release others, *Ronald v. Pacific Traction Co.*, 65 W. 430.

81 §783.

Will partial return of property satisfy judgment pro tanto—action on redelivery bond, *Hallidie Mach. Co. v. Whidby Island Co.*, 73 W.

81 §861.

Where the earnings of a wife belonged to the community, property purchased therewith was not exempt from execution on a judgment against the community, *Fisher v. Marsh*, 69 W. 570.

81 §872.

Bankrupt not entitled to substituted exemption under Subd. 4, *Jennings v. Stan-nus & Son*, 191 Fed. 347.

Other property may be selected in lieu of that provided in Subd. 4, *In re Scheier* 188 Fed. 744.

81 §881.

Not impliedly repealed, *Northwestern Ins. Co. v. Chehalis Bank*, 65 W. 374.

The exemption of life insurance not affected by the insolvency of the deceased, *Northwestern Ins. Co. v. Chehalis Bank*, 65 W. 374.

81 §915.

Execution creditor is not bona fide purchaser at his own sale—takes only actual interest of debtor, *American Sav. Bk. v. Helgesen*, 67 W. 572.

81 §921.

A purchaser at foreclosure sale is estopped to deny the right of redemption for the benefit of minors, though proceedings to redeem were not taken, where non-compliance was induced by agreement to make a quit-claim deed, *Mohney v. Ellis*, 69 W. 643.

81 §925.

Personal notice not required, *Johnson v. Johnson*, 66 W. 113.

81 §931.

Confirmation cures failure to publish notice of sale, *Strand v. Griffith*, 63 W. 334.

Confirmation cures defects of notice of sale, *McHugh v. Conner*, 68 W. 229.

Homestead claim on unoccupied land cannot be adjudicated on motion to confirm a judgment sale, *Scott v. Guiberson*, 71 W.

81 §949.

Whole title passes to purchaser under a foreclosure sale, including rents and possession, *Merz v. Mehner*, 67 W. 135.

81 §1027.

In an action by the heir of a grantor in a deed of gift, testimony of the grantee that he had possession of the deed very soon after its date and had kept it ever since, is not inadmissible, *Bardsley v. Truax*, 64 W. 400.

One suing administrator for money advanced deceased may not testify that deceased checked over his account and said it was correct, *Robertson v. O'Neill*, 67 W. 121.

81 §1033.

Does not prevent cross-examination of a physician charged with abortion requiring him to state the nature of a certain operation performed by him upon a woman, *State v. Stapp*, 65 W. 438.

81 §1047.

Witness 20 miles away in another county not in contempt for failing to appear, *State v. Court*, 67 W. 370.

81 §1127.

Copy of testimony given at a former trial and certified for appeal, may be introduced on a subsequent trial without recertification, *Knutson v. Moe Bros.*, 72 W.

81 §1163.

Vacation where no personal service limited to one year from judgment, *Bruhn v. Pasco Land Co.*, 67 W. 490.

81 §1167.

Applies in action to forfeit realty contract and quiet title, *Smith v. Stiles*, 68 W. 345.

Where original petition denied, amended petition was new proceeding, *Smith v. Stiles*, 68 W. 345.

81 §1183.

Attorney may appeal from order fixing compensation upon stipulation, *Jones v. Jones*, 72 W.

Neither an order of default for failure to answer, nor an interlocutory order directing specific performance or an alternative sale of property, is final and appealable, *Borell v. Carson*, 72 W.

81 §1183 Subd. 1.

Order striking part of cross-complaint not final, *Methow Canal Co. v. Barton*, 71 W.

81 §1187. Time of Appeal. §3. In civil actions and proceedings, an appeal from any final judgment must be taken within ninety days after the date of the entry of such final judgment; and an appeal from any order, other than a final order, from which an appeal is allowed by this act, within fifteen days after the entry of the order, if made at the time of the hearing, and in all other cases within fifteen days after the service of a copy of such order, with written notice of the entry thereof, upon the party appealing, or his attorney. In criminal causes, an appeal must be taken within ninety days after the entry of final judgment. R. & B. §1718; L 13 ch 116.

81 §1187.

Time runs from entry by clerk of order denying motion for new trial, *Woody v. Seattle Elec. Co.*, 65 W. 539.

81 §1189.

Only one notice is required on appeal from two judgments in quo warranto, dismissing the proceeding as to separate defendants, *State ex rel. Powell v. Fassett*, 69 W. 555.

Notice only to parties claiming deposit

in condemnation, *Nor. Pac. R. Co. v. Smith*, 68 W. 269.

Notice must be given assignee, *Robertson Mtg. Co. v. Thomas*, 63 W. 316.

Notice of appeal from refusal to vacate judgment cannot be amended to appeal from judgment, *State v. Tenney*, 63 W. 486.

Party pleading in nature of disclaimer, notice not necessary, *Soderberg v. McTae*, 67 W. 104.

81 §1193.

Appeal bond must not include condition as stay bond, *Smith v. Porter*, 66 W. 349.

Bond to other plaintiff than appellee ineffective, *Bruhn v. Steffins*, 66 W. 144.

Bond by part of appellants for all, good, *Gerlach v. Spokane*, 68 W. 589.

Respondent cannot urge error in not adding interest to a verdict for damages, in the absence of a cross-appeal with appeal bond, *Smith v. Diamond Ice Co.*, 65 W. 576.

81 §1195.

Profits from subcontracts elements of damage—surety's liability on continuance of injunction, *Mead v. Kalberg*, 70 W. 517.

Stay not necessary in divorce to carry whole case, *State ex Gibson v. Court*, 69 W. 280.

Bond on appeal from contempt judgment

should be at least the amount of original judgment, *State ex Sargent v. Court*, 71 W.

Supreme court stayed injunction, *Campbell Lum. Co. v. Deep River Co.*, 68 W. 431.

Does not entitle appellant to a supersedeas in a case affecting the public right, *Cooper v. Hindley*, 70 W. 331.

81 §1199.

If parties agree that restraining order shall stand until trial it is not subject of stay, *State ex Ferguson v. Court*, 71 W.

81 §1203.

An appeal will be dismissed where the bond on appeal contains no justification of any surety, *Mironski v. Noon*, 65 W. 568.

81 §1211.

Statement in narrative form untrue, remedy, *State ex Hofstetter v. Sheeks*, 63 W. 408.

81 §1212. Abstract of Record. §1. The appellant shall, at or before the time when he is required by rule or statute to serve his opening brief, cause to be typewritten and served upon the opposite party an abstract of so much of the record and statement of facts as he may deem necessary to the proper hearing of his assignments of error. Said abstract, in so far as it sets out testimony, shall be condensed into narrative form, without the questions and answers except when necessary for the discussion of evidence. It shall be prepared without notice or hearing thereon, and if the opposite party be not satisfied with it, he may cause to be typewritten and served, without notice, either before or at the time of serving his answering brief, so much of the record and statement of facts, condensed as above, as he for his part may deem proper for the correction or supplementing of his opponent's abstract. Each party shall pay the cost of typewriting his abstract, and the prevailing party shall be entitled to recover his disbursements therefor as other costs. For any abuse in typewriting excessive or unnecessary matter in the abstract, the supreme court, without regard to which party may prevail, may impose the costs thereof upon the party committing such abuse. The supreme court shall also provide by rule the form of abstracts, the number thereof to be typewritten, and for other particulars thereof, including the time and place of filing the same. L '13 ch 116.

81 §1212a. Statement of Facts as Heretofore. §2. Nothing in this act contained shall alter in any respect the present manner of settling and certifying statements of fact and bills of exceptions, and such statements and bills shall be transmitted to the supreme court to be referred to in any controversy concerning the accuracy of the abstracts, as well as for reference to exhibits, and for such other uses as the supreme court may find proper in consideration of all matters on appeal. L '13 ch 116.

81 §1213.

Briefs not filed for fifteen months, appeal dismissed, *Levold v. Stirrat*, 71 or 72 W.

81 §1215.

Superior court has jurisdiction to make all orders necessary to enable it to settle bills of exceptions and statements of facts, including an order requiring the production of stenographic notes, *State ex rel. Griffith v. Court*, 71 W.

Appeal by the state from an order fixing bail does not operate as a stay of proceedings, and the court must accept bail pending the appeal, *State ex rel. Morehead v. Chapman*, 64 W. 140.

The taking of an appeal from a decree in divorce deprived the trial court of jurisdiction to modify the written entry of the judgment at the instance of an intervenor, *Gust v. Gust*, 71 W.

81 §1219.

Appeal dismissed as duplicitous where actions were tried together but not consolidated by order, *Oerter v. Georger*, 70 W. 110.

81 §1221.

Appeal dismissed because one not a party to action signed bond, *Canal Lum. Co. v. Kong Yick Inv. Co.*, 67 W. 126.

Bond may be amended to cover "all costs," *Roznik v. Becker*, 68 W. 63.

An appeal will be dismissed where the judgment was in favor of one of the plaintiffs, and the bond was given to the other plaintiffs, as obligees, and the same cannot be amended by filing new bond, *Bruhn v. Steffins*, 66 W. 144.

81 §1227.

Supreme court cannot review prior judgment not appealed from, *Wagner v. Northern Life Co.*, 70 W. 210.

Mandamus will issue to compel entry of a judgment according to the mandate of the supreme court on appeal, *State ex rel. Smith v. Court*, 71 W.

81 §1241.

Awarding costs on appeal is largely in the court's discretion, *Michaelson v. Seattle*, 63 W. 230.

81 §1245.

Verdict for manslaughter on charge of murder, bail allowed; appeal by state is not stay against bail, *State ex. Moorehead v. Chapman*, 64 W. 140.

Upon a trial for murder, in which the defendant receives a verdict of manslaughter, he is entitled to bail pending appeal. *State v. Chapman*, 64 W. 140.

81 §1255.

Amendment of complaint considered as made to conform to evidence admitted without objection, *Godfrey v. Olson*, 68 W. 59.

81 §1261.

Ship lighterers may offset indebtedness to them from the charterers of a ship in an action by the owners upon abandonment of the vessel, *Boston Tow Boat Co. v. Sesnon Co.*, 64 W. 375.

81 §1275.

A claim against an assignor cannot be asserted against the assignee of an executory contract who took it in the executory stage, in the absence of insolvency of assignor, *King v. West Coast Grocery Co.*, 72 W.

81 §1277.

Will not aid contract void as against public policy, *Delbridge v. Beach*, 66 W. 416.

81 §1279.

Costs must be taxed in original action, *Perlus v. Silver*, 71 W.

Costs are allowed to the party who has an affirmative judgment on the entire case, *Empire State Co. v. Moran Bros.*, 71 W.

81 §1291.

Costs may be taxed for mileage and one day's attendance, for witnesses who reported to the clerk on the last day of trial, *Daniels v. Spear*, 65 W. 121.

81 §1295.

Fees of a witness not subpoenaed may be taxed as costs, *Hofstetter v. Sound Trustee Co.*, 67 W. 537.

81 §1309.

Does not authorize costs in proceedings respecting delinquent children, *Pierce County v. Magnuson*, 70 W. 639.

81 §1335.

Actions to quiet title and recover possession are not the same, *Bruhn v. Pasco Land Co.*, 67 W. 490.

A decree quieting title may be had notwithstanding the invalidity of the claim moved against, *Crowley v. Byrne*, 71 W.

81 §1339.

A complaint in ejectment need not allege seizin within the statutory time limitation, *Wilkison v. Miller*, 63 W. 680.

81 §1341.

An answer asserting no title amounts to a disclaimer and admits no evidence, *Soderberg v. McRae*, 67 W. 104.

81 §1347.

Recovery for improvements on breach of oral contract to convey, *Ernst v. Schmidt*, 66 W. 452.

Claim of occupant allowed tenant in common, *Johnson v. Ingram*, 63 W. 554.

81 §1365.

Does not apply to actions to quiet title, *Bruhn v. Pasco Land Co.*, 67 W. 490.

Vacation of judgment in action to forfeit contract and quiet title is limited to one year, *Smith v. Stiles*, 68 W. 345.

Does not apply to an action to quiet title where there is no award of possession, *Smith v. Stiles*, 68 W. 345.

81 §1369.

Complaint insufficient under this section may be sufficient under 81 §1335, *Crowley v. Byrne*, 71 W.

An allegation of ownership in fee is sufficient, *Bruhn v. Pasco Land Co.*, 67 W. 490.

81 §1373.

Mere possession at one time is not sufficient, *Nor. Pac. R. Co. v. Smith*, 68 W. 269.

Statute does not run against estate in remainder, *McDowell v. Beckham*, 72 W.

81 §1397.

Failure to pay taxes is unlawful detainer, *Olson Land Co. v. Alki Park Co.*, 63 W. 521.

81 §1427.

Upon the unlawful detainer of a house for one month after notice, the landlord is entitled to double rent for one month, and consequential damages, *Shannon v. Loeb*, 63 W. 640.

A clause in a lease stipulating damages for failure to perform covenants, does not relate to damages for unlawful detainer, *O'Connell v. Aral*, 63 W. 280.

81 §1463.

Title may be quieted and partition granted in the same action, *Crowley v. Byrne*, 71 W.

81 §1549.

Prior to statute remainderman allowed action only by equitable grace, *McDowell v. Beckham*, 72 W.

81 §1551.

Trial amendment bringing in plaintiff's parents allowed, *Townsend v. Three Lakes Lum. Co.*, 67 W. 654.

Removal of timber after cutting may not be evidence of willfulness, *Rogers v. Kangley Timber Co.*, 74 W.

The measure of damage is treble the value of the standing timber, *Bailey v. Hayden*, 63 W. 57.

Has no application where the owner of the fee removed timber that had been reserved from the grant, since the statute is penal and must be strictly construed, *Skamania Boom Co. v. Youmans*, 64 W. 94.

81 §1565.

Two deeds of lands in two counties may be foreclosed by an action in either county, *Empire State Co. v. Siefert*, 66 W. 76.

81 §1577.

A foreclosure decree may be entered determining the amount of installments then due and to become due, and providing for subsequent orders of sale to satisfy maturing installments, *Naden v. Christopher*, 67 W. 578.

81 §1729.

Will lie to review school directors' dismissal of teacher when county officer to whom appeal would lie has prejudged case, *State ex Caffrey v. Court*, 72 W.

Will not lie to prevent vexatious orders of court causing parties to be brought in,

State ex Langley v. Court, 73 W.

Will not lie in election contest, State ex Quigley v. Court, 71 W.

Will not lie to review denial of temporary injunction unless insolvency shown, State ex Coombs v. Court, 69 W. 439.

Will not lie to review order adjudging a public use in eminent domain, State ex Bremer v. Court, 68 W. 51.

Quashed when issued to review Civil Service Commission, King v. Listman, 63 W. 271.

Will not lie to review order refusing to quash summons, State ex Coplen v. Court, 66 W. 225.

81 §1753.

Will lie to compel court to proceed to final judgment, State ex Murphy v. Court, 73 W.

Will lie to compel city warrant for damages in eminent domain, State ex Murray v. Hillyard, 73 W.

Will lie to compel court to enter proper judgment on verdict of not guilty, State ex Gabe v. Main, 66 W. 381.

Will lie to compel public officers to make estimates for public work, State ex Warehouse etc. Co. v. Spokane, 65 W. 385.

Will not lie to compel state officers to collect industrial insurance tax as a control of discretion, State ex Rosbach v. Pratt, 68 W. 157.

81 §1781.

Will lie to prevent trial after motion for change of venue, State ex Jones v. Gay, 65 W. 629.

Will not lie against contempt order, State ex Com'rs v. Court, 73 W.

Will not lie to prevent trial after one

change of venue, another change being sought for prejudice of judge, State ex Moore v. Court, 70 W. 362.

Will not lie after denial of motion to vacate default, State ex Skamser v. Court, 65 W. 457.

81 §1795.

Writ in favor of foreman of construction work of city under, civil service, State ex Powell v. Fassett, 69 W. 555.

81 §1827.

Action for wrongful death survives only against wrongdoer, Rinker v. Hurd, 69 W. 257.

81 §1843.

Substantial damage by violation of order must be shown to warrant punishment for contempt by more than a fine of \$100.00, State v. Erickson, 66 W. 639.

81 §1849.

Damages may be awarded without right to jury trial, State v. North Shore Co. 67 W. 317.

81 §1851.

Does not limit power of equity court to enforce decrees, McGill v. McGill, 67 W. 303.

Contempt for failure to pay alimony properly brought in original case, Poland v. Poland, 63 W. 597.

81 §1867.

Supersedeas bond on appeal should be at least in amount of original judgment, State ex Sargent v. Court, 71 W.

81 §1881.

Words charging a female with adultery are not actionable if privileged Miller v. Gust, 71 W.

TITLE 85—CODE.

AN ACT to adopt Pierce's Washington Code as an official compilation. Approved March 17, 1913. Laws '13 ch 95.

85 §15. **Pierce's Code 1912 Official.** §1. The compilation of the session laws of the State of Washington, arranged and compiled by Frank Pierce and known as "Pierce's Washington Code," is hereby adopted as an official compilation of existing statutes of the state up to and including the year 1911.

85 §17. **References.** §2. It shall be proper for the legislature, in amending or repealing existing statutes, and for the courts in referring to existing statutes, to refer to or cite Pierce's Washington Code containing such law.

TITLE 95—COMMUNITY RIGHTS.

95 §3.

A transfer of property between husband and wife is presumptively fraudulent as against creditors, Dill v. Carver, 70 W. 103.

Property cannot be handed back and forth between spouses to dodge creditors, Kalinowski v. McNeny, 68 W. 681.

95 §5.

Does not authorize wife to sue husband for a tort committed upon her person during coverture, Schultz v. Christopher, 65 W. 496.

Does not authorize a wife to establish a domicile separate from husband during the existence of the marital relation,

though she may do so when the relation has been abandoned, Bucholz v. Bucholz, 63 W. 213.

95 §7.

Mother alone may make claim to county for death of husband, Frasier v. Cowlitz County, 67 W. 312.

95 §9.

Marriage void and husband paid for most of work, wife took back her property, Sortore v. Sortore, 70 W. 410.

95 §25.

Husband seeking letters on wife's estate is not admission of community estate she attempted to will, Worthington v. Crasper, 63 W. 380.

95 §27.

Wife signed mortgage to secure building contract and was bound, *Bird v. Steele*, 74 W.

Act '71 cited and construed, *Guye v. Guye*, 63 W. 340.

Judgment against community interest of husband valid, *Alaska etc. Co. v. Simmons*, 67 W. 673.

Subject to judgment against husband for community debt, *Woste v. Rugge*, 68 W. 90.

In the absence of evidence that personal property was the separate property of the wife, her bill of sale thereof is a nullity, *Blinn v. Smith*, 66 W. 192.

Community is liable for torts in community business, *Milne v. Kane*, 64 W. 254.

Cohabitation gives no presumption of community property—proof, *Sloan v. West*, 63 W. 623.

95 §29.

Testator's intent not clear, widow not required to exercise option, testator presumed to deal with his interest only, *Herrick v. Miller*, 69 W. 456.

95 §47.

Conveyance to wife held not to defeat execution on then "existing equity," *Salaske v. Fletcher*, 73 W.

TITLE 99—CONGRESS.

AN ACT to redistrict and reapportion the State of Washington into five congressional districts. Approved March 17, 1913. Laws '13 ch 94.

99 §1. First District. §1. That the city of Seattle and Kitsap county shall constitute the first congressional district and shall be entitled to one representative in congress of the United States.

99 §2. Second District. §2. That the counties of Clallam, Jefferson, Snohomish, Skagit, Whatcom, San Juan, Island and that portion of King county outside of Seattle, shall constitute the second congressional district and shall be entitled to one representative in congress of the United States.

99 §3. Third District. §3. That the counties of Chehalis, Mason, Thurston, Pierce, Pacific, Lewis, Wahkiakum, Cowlitz, Clarke and Skamania shall constitute the third congressional district and shall be entitled to one representative in congress of the United States.

99 §4. Fourth District. §4. That the counties of Klickitat, Yakima, Benton, Kittitas, Whitman, Grant, Adams, Franklin, Walla Walla, Columbia, Garfield and Asotin shall constitute the fourth congressional district and shall be entitled to one representative in congress of the United States.

99 §5. Fifth District. §5. That the counties of Ferry, Stevens, Lincoln, Spokane, Chelan, Okanogan, Douglas and Pend Oreille shall constitute the fifth congressional district and shall be entitled to one representative in congress of the United States.

99 §7. Elections. §6. That, at the next general election to be held on the first Tuesday after the first Monday in November, 1914, one representative in the congress of the United States shall be elected in each of the congressional districts by the qualified electors therein and the votes for said representatives shall be given, received, returned and canvassed as the same are now given, received, returned and canvassed for electors for president and vice president of the United States.

TITLE 107—COUNTIES.

107 §9.

107 §§101, 103, governs Grant County's

adjustment of property rights, *Douglas County v. Grant County*, 72 W.

AN ACT authorizing counties and cities to contract for joint acquisition, ownership, construction, control and use of municipal buildings and property necessary, and permitting the use of certain funds therefor. Approved March 17, 1913. Laws 13 ch 90.

107 §183. Joint City and County Buildings. §1. Where the county seat of any county in this state shall be within the corporate limits of any incorporated city such county and city may contract one with the other for the joint purchase, acquisition, leasing, ownership, control and disposition of land and other property suitable as a site for a county court house and city hall and for the joint construction, ownership, control and disposition of a building or buildings thereon for the use by such county and city as a county court house and city hall. Any such county or city now owning a site or any in-

terest therein, or a site with buildings thereon, may, upon such terms as shall appear fair and just to the board of county commissioners of such county or to the city council or commission of such city, contract with reference to the joint ownership, acquisition, leasing, control, improvement and occupation of such property as herein provided.

107 §185. **Contracts.** §2. All contracts made in pursuance hereof shall be for such period of time and upon such terms and conditions as shall be agreed upon. Such contract shall fully set forth the amount of money to be contributed by such county and city towards the acquisition of such site and the improvement thereof and for the manner in which such property shall be improved and the character of the building or buildings to be erected thereon. Such contract may provide for the amount of money to be contributed annually by such county and city for the upkeep and maintenance of such property and the building or buildings thereon, or it may provide for the relative proportion of such expense which such county and city shall annually pay. Such contract shall specify the parts of such building or buildings which shall be set apart for the exclusive use and occupation of such county and city.

107 §187. **Method of Payment.** §3. The money to be contributed by such county or city may be raised by a sale of the bonds of such county or city, or by general taxation as now or hereafter authorized by law. Any such county or city now possessing funds or having funds available for a county court house or city hall from the sale of bonds or otherwise, is herewith authorized to contract for the expenditure of such funds as herein provided.

107 §189. **Method and Duration of Payment.** §4. Such contract shall be made only after a proper resolution of the board of county commissioners of such county and ordinance of such city duly passed specifically authorizing the same. Such contract when made shall be binding upon such county or city during the life of the same or until the same be modified or abrogated by mutual consent evidenced by a proper resolution and ordinance of such county and city.

TITLE 115—COUNTY OFFICERS.

115 §1. Federal census automatically controls
Salaried clerks must turn over half of the classification of counties until population of the county is otherwise determined by competent authority, *Faucher v. Franklin County v. Barnes*, 68 W. 488. *Rosenoff*, 65 W. 416.

115 §35. **Fourteenth Class.** §16. County auditor, fifteen hundred dollars; county clerk, fourteen hundred dollars; county treasurer, fifteen hundred dollars; county sheriff, fifteen hundred dollars; county attorney, fourteen hundred dollars; county superintendent of common schools, twelve hundred dollars; county commissioners, four dollars per day; county assessor, fifteen hundred dollars; county coroner, such fees as are allowed by law. R&B §4046; L '13 ch. 119.

115 §37. **Fifteenth Class.** §17. County auditor, fifteen hundred dollars; county clerk, thirteen hundred and fifty dollars; county treasurer, fourteen hundred and fifty dollars; county sheriff, fourteen hundred and fifty dollars; county attorney, thirteen hundred dollars; county superintendent of common schools, eleven hundred dollars; county commissioners, four dollars per day; county assessor, four dollars per day; county coroner, such fees as are allowed by law. R&B §4047. L '13 ch 119.

115 §39. **Sixteenth Class.** §18. County auditor, fifteen hundred dollars; county clerk, thirteen hundred and fifty dollars; county treasurer, fourteen hundred dollars; county sheriff, fourteen hundred dollars; county attorney, twelve hundred dollars; county superintendent of common schools, one thousand dollars; county commissioners, four dollars per day; county surveyor, five dollars per day; county assessor, four dollars per day; county coroner, such fees as are allowed by law. R&B §4048; L '13 ch. 119.

115 §41. **Seventeenth Class.** §19. County auditor, fifteen hundred dollars; county clerk, thirteen hundred and fifty dollars; county treasurer, fourteen hundred dollars; county sheriff, fourteen hundred dollars; county attorney,

eleven hundred dollars; county superintendent of common schools, one thousand dollars; county commissioners, four dollars per day; county surveyor, such fees as are allowed by law. R&B. §4049; L '13 ch 119.

five dollars per day; county assessor, four dollars per day; county coroner,

AN ACT to establish and regulate the salaries of county commissioners in counties having a township organization, other than counties of the first class. Approved March 3, 1913. Laws '13 ch 23.

115 §68. Salaries of Commissioners Where Townships Organized. §1. That in all counties other than counties of the first class which have adopted or may hereafter adopt and put in force township organization, the compensation of county commissioners shall be and the same is hereby fixed at five dollars (\$5.00) per day for each and every day actually employed in the discharge of their duties: Provided, That they shall not be entitled to nor receive such per diem for more than two hundred (200) days in any one year: And provided further, That such county commissioners shall be entitled to all actual traveling and other necessary expenses incurred in the discharge of their duties.

115 §73.

Salaried clerks must turn over half of naturalization fees allowed by federal law, Franklin County v. Barnes, 68 W. 488.

115 §115.

Regulations regarding the presentation of claims against counties do not apply to suits in equity, Kiser v. Douglas County, 70 W. 242.

115 §193.

County commissioners may employ alienist to aid in a prosecution for homicide, Williamson v. Snohomish County, 64 W. 233.

Commissioners may compromise con-

troversy as to validity of tax sale, Franklin County v. Carstens, 68 W. 176.

115 §223.

The exceptions to the rule that the judgment of a board of county commissioners is conclusive upon questions within its jurisdiction are appeal, and in cases where the board acts ministerially, without discretion, Lewis County v. Monfort, 72 W.

Presentation of a claim for damages for death may be made by the widow for herself and minor children, Frasier v. Cowlitz County, 67 W. 312.

115 §279. Terms of Lease. §4. At the day and hour designated in such notice or at any subsequent time to which such meeting may be adjourned by said board of county commissioners, but not more than thirty days after the day and hour designated for the meeting in said published notice, the board of county commissioners may, at their discretion, lease the property in such notice described for a term of years and upon such terms and conditions as to the said board of county commissioners shall seem just and right in the premises; but for no longer term in any one instance than ten (10) years, and no renewal of a lease once executed and delivered shall be had, except by a releasing and re-letting of said property according to the terms and conditions of this act: Provided, That where a county owns property within the corporate limits of any city or town suitable for municipal purposes, or for commercial buildings, or owns property suitable for manufacturing or industrial purposes, the board of county commissioners may lease same for said purposes for any period not to exceed thirty-five years. Where property is leased for municipal purposes or for commercial buildings or manufacturing or industrial purposes the lessee therein shall prior to the execution of such lease file with said board of county commissioners general plans and specifications of the building or buildings to be erected thereon for such purposes. All leases when executed shall provide that the same shall be cancelled by failure of the lessee to construct such building or buildings or other improvements for such purposes within two years from date of such lease, and in case of failure so to do the lease and all improvements thereon, including the rentals paid, shall thereby be forfeited to the county. No change or modification of said plans shall be made unless same be first approved by the board of county commissioners. If at any time during the life of said lease the lessee shall fail to use the same for the purposes leased, without first obtaining permission in writing from the board of county commissioners so to do, said lease shall be forfeited. Any lease made for a longer period than ten (10) years shall contain provisions requiring the lessee to permit the rentals for

every five-year period thereafter, or part thereof, at the commencement of such period, to be re-adjusted and fixed by the board of county commissioners. In the event that the lessee and said board of county commissioners cannot agree upon the rentals for said five-year period, the lessee shall submit to have said disputed rentals for said subsequent period adjusted by arbitration. The lessee shall pick one arbitrator and the board of county commissioners one, and the two so chosen shall select a third. No board of arbitrators shall reduce the rentals below the sum fixed or agreed upon for the last preceding period. All buildings, factories or other improvements made upon property leased under this proviso shall belong to and become property of such county, unless otherwise stipulated, at the expiration of the lease. No lease so made shall be assigned without such assignment being first authorized by resolution of said board of county commissioners and the consent in writing of at least two (2) members of said board endorsed on such lease and all leases when drawn shall contain this provision. R&B §3854; L '13 ch. 162.

115 §327.

Repealed and substituted 115 §595 Supp.

AN ACT relating to the duties and functions of coroners and justices of the peace; abolishing the office of county coroner in certain counties, and repealing all acts in conflict herewith. Approved March 11, 1913. Laws '13, ch. 55.

115 §371a. **Inquest by Prosecuting Attorney.** §1. That whenever information is given to the prosecuting attorney of any county that the dead body of any person has been found in such county, and there shall exist reasonable grounds for the belief that such death was caused by unlawful means, the prosecuting attorney shall, as a part of his official duties, direct a justice of the peace residing in the county seat of the county to forthwith go to the place where such dead body was found and make an investigation, which shall be public and shall be held at such time and place as shall give any person interested therein an opportunity to be present and to be represented by counsel, and in cases where said justice of the peace receives no salary he shall receive a compensation of five dollars for each investigation, and, in addition thereto, said justice of the peace shall receive his actual and necessary expenses in going to and returning from the place where said investigation is made.

115 §371b. **Powers of Justice of the Peace.** §2. That the justice of the peace in the conduct of such investigation is hereby empowered to summon and compel the attendance of any witness deemed necessary or requested by any person interested therein, to administer oaths to such witnesses, to examine such witnesses in all matters pertinent to such investigation, to have their testimony taken down and transcribed, and to cause an autopsy to be performed if deemed advisable by the prosecuting attorney of said county.

115 §371c. **Transcript to Be Filed.** §3. That immediately after the conclusion of such investigation, said justice of the peace shall make a full report to, and file same with, said prosecuting attorney together with all evidence taken at such investigation, and the prosecuting attorney shall file said transcript of the testimony given in such investigation and all evidence taken together with his written opinion as to how such person came to his death, in the office of the county clerk of said county.

115 §371d. **Property, Custody of.** §4. That, except where otherwise provided by law, the said justice of the peace shall take into his custody any money or other property found upon such dead body or belonging to the deceased and shall deliver the same as soon as practicable to the prosecuting attorney.

115 §371e. **Disposal of Body—Expense.** §5. That as soon as practicable after such investigation the justice of the peace shall cause such dead body, unless the same be demanded by a legal claimant, to be delivered to a competent undertaker, designated by the board of county commissioners of the county, who shall decently bury the same, and such undertaker shall receive reasonable compensation, not exceeding thirty-five dollars, therefor: Provided, That such compensation shall, as far as possible, be paid by the pros-

ecuting attorney out of any money or property found upon or belonging to the deceased.

115 §371f. **Fees of Witnesses.** §6. All witnesses appearing at such investigation shall be entitled to the same fees and mileage as witnesses in the superior court.

115 §371g. **Refusal to Testify a Misdemeanor.** §7. The failure or refusal of any witness to appear or testify at such investigation, when such witness has been duly summoned, shall be a misdemeanor.

115 §371h. **Money, Disposal of.** §8. The prosecuting attorney shall, after paying the burial expenses provided for by section five of this act, pay the balance of any money in his hands to the executor or administrator of such deceased, if one has been appointed, and, if not, to the county treasurer of the county.

115 §371i. **Coroners Abolished.** §9. The office of county coroner is hereby abolished as to all counties of this state except counties of the first class, and none of the provisions of this act shall apply to or in counties of the first class.

115 §371j. **General Repeal.** §10. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

115 §371k. **Act in Effect 1915.** §11. This act shall take effect on the second Monday of January, 1915, and at said time all coroners affected by this act shall deliver to the prosecuting attorneys of their respective counties all property which had theretofore come into their possession by virtue of their official capacity as coroners.

115 §415.

70 W. 587.

Includes all officers required to serve One who sues to compel payment of war-process entailing the seizure of property, rant has no preference over holders of Canfield-Caulkins Co. v. Cowden, 70 W. 587. prior warrants who make no effort to col-

Levying officer may demand a bond in lect, State ex rel. Polson v. Hardcastle, all cases where he has to take personal 68 W. 548. property, Canfield-Caulkins Co. v. Cowden, 115 §529.

TITLE 127—COURTS.

127 §53.

new trial denied and entry by clerk,

Time for appeal runs from motion for Woody v. Seattle Electric Co., 65 W. 539.

127 §143. **Thurston and Mason Counties.** §1. From and after the passage and approval of this act there shall be two judges of the superior court of the State of Washington in and for Thurston and Mason counties. L. '13, ch. 17.

127 §203.

trict may rule thereon anywhere in state,

Judge having heard cause out of his dis- Rice v. Ahlman, 70 W. 6.

AN ACT providing for the appointment of official court reporters in the State of Washington, prescribing their duties, oath of office, and qualifications, and providing for their compensation and the manner of their appointment. Approved March 19, 1913. Laws '13 ch. 126.

127 §213. **Official Court Reporters.** §1. It shall be the duty of each superior court judge in counties or judicial districts in the State of Washington having a population of over thirty thousand inhabitants to appoint a stenographer to be attached to the court holden by him, (except, for the sake of economy, where in counties or judicial districts having more than one judge there is not sufficient trial work to require the services of two or more official reporters, the judges of such courts may, provided their trial dockets can be satisfactorily arranged so as not to delay the trials of cases, appoint one official reporter jointly to act as official reporter for their respective courts), who shall have had at least three years' experience as a skilled, practical court reporter, or who upon examination shall be able to report and transcribe accurately one hundred fifty words per minute of the judge's charge or one hundred seventy-five words of testimony for five consecutive minutes; said test of efficiency, in the event of inability to meet the qualifications as to length of time of experience, to be given by a committee of

three of the attorneys of the county or district in which the said stenographer is seeking to act as official reporter, and such stenographer shall thereupon become an officer of the court and shall be designated and known as the official reporter for the court or district for which he is appointed. Each official reporter so appointed shall hold office during the term of office of the judge appointing him, but may be removed for incompetency, misconduct or neglect of duty, and before entering upon the discharge of his duties shall take an oath to perform faithfully the duties of his office, and file a bond in the sum of two thousand dollars (\$2,000) for the faithful discharge of his duties. No person shall be appointed to the office of official reporter who is not a citizen of and a duly qualified elector in the State of Washington.

127 §215. **Duties—Notes to Be Filed.** §2. It shall be the duty of each official reporter appointed under this act to attend every term of the superior court in the county or judicial district for which he is appointed, at such times as the judge presiding may direct; and upon the trial of any cause in any court, if either party to the suit or action, or his attorney, request the services of the official reporter, the presiding judge shall grant such request, or upon his own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except when the judge and attorneys dispense with his services with respect to any portion of the proceedings therein, which notes shall be filed in the office of the clerk of the superior court where such trial is had.

127 §217. **Pay—Vouchers.** §3. Each official reporter so appointed shall be paid a compensation at the rate of ten dollars (\$10) per diem for every day that he is actually in attendance upon said court pursuant to the direction of the court, which compensation shall be paid out of the county treasury where such court is held, as other expenses of the court are paid; and the sworn statement of the official reporter as to the number of days' attendance upon the court, when certified as correct by the judge presiding, shall be a sufficient voucher to the county auditor, upon which he shall draw his warrant upon the treasurer of the county in favor of the official reporter.

127 §219. **Fee for Fund.** §4. In each civil action hereafter commenced the sum of one dollar (\$1) shall be paid by the plaintiff at the time of the filing of the complaint to the clerk of the court, and at time of the appearance of the defendant, or any defendant appearing separately, there shall be paid in to the clerk of the court one dollar (\$1), and these sums so paid shall be taxed as costs in the case, and collected from the unsuccessful party in said action, and shall be known as stenographers' costs, and shall be paid by the clerk of said court into the county treasury of the county in which said action is commenced.

127 §221. **Transcripts—Fees.** §5. When shorthand notes have been taken in any cause as in this act provided, if the court, or either party to the suit or action, or his attorney, requests a transcript of the notes into long hand, the official reporter shall make, or cause to be made, with reasonable diligence, full and accurate typewritten transcript of the testimony and other proceedings, which shall, when certified to, as hereinafter provided, be filed with the clerk of the court where such trial is had for the use of the court or parties to the action. The fees of the reporter for making such transcript shall be fifteen cents per folio of one hundred words for the original copy, and five cents per folio for each carbon copy ordered before the original is made, or made at the same time as the original, and when such transcript is ordered by any party to any such suit or action said fees shall be paid forthwith by the party ordering the same, and in all cases where a transcript is made as provided for under the provisions of this act the cost thereof shall be taxable as costs in the case, and shall be so taxed as other costs in the case are taxed: Provided, That when the defendant in any criminal cause shall present to the judge presiding satisfactory proof, by affidavit or otherwise, that he is unable to pay for such transcript, the presiding judge, if in his opinion justice will thereby be promoted, may order said transcript to be made by the official reporter, in which case the official reporter shall be paid for preparing said transcript ten cents per folio for the original copy

and five cents per folio for each carbon copy ordered at the same time as the original or made at the same time as the original, which transcript fee shall be paid in like manner as the per diem fees are paid as specified in section three of this act.

127 §223. **Transcripts as Evidence.** §6. The report of the official reporter, when transcribed and certified as being a correct transcript of the stenographic notes of the testimony, or other oral proceedings had in the matter, shall be prima facie a correct statement of such testimony or other oral proceedings had, and the same may thereafter, in any civil cause, be read in evidence as competent testimony, when satisfactory proof is offered to the judge presiding that the witness originally giving such testimony is then dead or without the jurisdiction of the court, subject, however, to all objections the same as though such witness were present and giving such testimony in person.

127 §225. **Transcripts after Reporter Out of Office.** §7. When the official reporter who has taken notes in any cause, shall thereafter cease to be such official reporter, any transcript thereafter made by him therefrom, or made by any competent person under the direction of the court, and duly certified to by the person making the same, under oath, as a full, true and correct transcript of said notes, the same shall have full force and effect the same as though certified by an official reporter of said court.

127 §226. **Reporter Pro Tem.** §8. In the event of the absence or inability of the official reporter to act, the presiding judge may appoint a competent stenographer to act pro tem, who shall perform the same duties as the official reporter, and whose report when certified to, shall have the same legal effect as the certified report of the official reporter. The reporter pro tem shall possess the qualifications and take the oath prescribed for the official reporter, and shall file a like bond, and shall receive the same compensation.

127 §227. **Reporter as Judge's Stenographer—Pay.** §9. In all counties or judicial districts, except counties of the first class, such official reporter shall act as amanuensis to the court where he is appointed, and the court may allow him per diem therefor, as provided in this act: Provided, That in no event shall the per diem for such work exceed ten days in any one calendar month.

127 §228. **Files Taken Out by Reporter.** §10. Official reporters or reporters pro tem may, without order of court, upon giving a proper receipt therefor, procure at all reasonable hours from the office of the clerk of the court, any files or exhibits necessary for use in the preparation of statements of fact or transcribing portions of testimony or proceedings in any cause reported by them.

127 §229. **Office Supplies.** §11. Necessary supplies for reporting and for the preparation of transcripts in criminal cases shall be furnished by the county. Typewriters and all other supplies in all other cases shall be furnished by the stenographers. In counties where arrangements can be made therefor, suitable office room shall be furnished the official reporter.

127 §231. **Transfer of Reporters.** §12. At the request of either party to an action an official reporter from the same or any other district in the state may be substituted for the official reporter of the court in which the action is being tried for the purpose of reporting the trial of said action: Provided, That the party or parties to the action requesting such substitution pay or secure to be paid to the clerk of the court the necessary traveling and hotel expenses of the official reporters so substituted as aforesaid.

127 §233. **Act Does Not Apply, Where.** §13. This act shall not apply to any county having a population of two hundred thousand, or over.

TITLE 135—CRIMES; CRIMINAL PROCEDURE.

135 Title.

Title of criminal code 1909 includes different method of proof than formerly obtained, *State v. Blaine* 64 W. 122.

Criminal code saves prior laws as to prior crimes, *State v. Morrow*, 63 W. 297.

135 §7.

Confederate in lesser crime convicted of greater crime, *State v. Moretti*, 66 W. 537.

Participation in a robbery under duress is not a defense in a prosecution for the

murder of the person robbed, *State v. Moretti*, 66 W. 537.

135 §21.

Verdict for included offense. 135 §1205.

Assault with weapon, *State v. Copeland*, 66 W. 244.

Greater offense may be shown than that charged, *State v. Hatch*, 63 W. 617.

Assaults not included in manslaughter, *State v. Phillips*, 65 W. 324.

135 §23.

Sentence of 5 to 7 years for attempted burglary sustained, *State v. Mallahan*, 65 W. 287.

135 §55.

Authorizes the court to suspend sentence upon a plea of guilty, and to commit the defendant thereafter, *State v. Mallahan*, 65 W. 287.

135 §57.

Sentence of 5 to 7 years for attempted burglary sustained, *State v. Mallahan*, 65 W. 287.

Court exceeded its power in fixing a minimum term of 10 years for possessing a forged instrument with intent to utter, *State v. Andrews*, 71 W.

135 §61.

Superior court has jurisdiction at all times if defendant becomes insane, *State v. Wilson*, 69 W. 235.

135 §67.

Habitual criminal need not be tried within five days, *State v. Alexander*, 65 W. 488.

135 §69.

Vasectomy not an unconstitutional punishment, *State v. Fellen*, 70 W. 65.

135 §75.

Former conviction of witness may be shown by the testimony of the witness, *State v. Stone*, 66 W. 625.

Title held sufficient, *State v. Blaine*, 64 W. 122.

Court may compel accused on cross-examination to testify to a former conviction where the jury were properly instructed, *State v. Blaine*, 64 W. 122.

Previous conviction of felony or misdemeanor may be shown on cross-examination of accused, *State v. Overland*, 68 W. 566.

135 §101.

A bank check is sufficient to support the

crime of extortion whether or not the signature thereon is regular, *State v. Barr*, 67 W. 87.

135 §113.

Court may not direct verdict of guilty, *State v. Holmes*, 68 W. 7.

135 §119.

Continuance within time properly granted the state for absent witness, *State v. Grune*, 72 W.

Where defendant's trial was delayed that his demurrer might be heard he was not entitled to a dismissal, *State v. Fox*, 71 W.

Motion to dismiss must be made before trial, *State v. Alexander*, 65 W. 488.

Does not apply to a second trial after an appeal, *State v. Miller*, 72 W.

135 §125.

Dismissal for variance with another information is not a bar, *State v. Poole*, 64 W. 47.

135 §127.

"Proof" includes evidence disclosed to the prosecuting attorney on interviewing witnesses in preparing the case, *State v. Poole*, 64 W. 47.

135 §135.

Applies to bribery of a city policeman, *State v. Nick*, 66 W. 134.

135 §137.

Both soliciting and accepting a bribe may be charged in one indictment, *State v. Wappenstein*, 67 W. 502.

135 §161.

Includes offer to influence prosecuting attorney to dismiss pending prosecution, *State v. Marion*, 68 W. 675.

135 §179.

Jail breaking in another state must be shown infamous to support charge of false registration for election, *State v. Collins*, 69 W. 268.

135 §201.

"Swear" means to state a fact under the sanctity of an oath or affirmation administered by a duly authorized and qualified officer, *State v. Dallagiovanna*, 69 W. 84.

135 §239.

Is declaratory of the common law and equivalent to contempt in the face of the court, *State v. Buddress*, 63 W. 26.

135 §279. **Murder in the First Degree.** §140. The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when committed either—

1. With a premeditated design to effect the death of the person killed, or of another; or,

2. By an act imminently dangerous to others and evincing a depraved mind, regardless of human life, without a premeditated design to effect the death of any individual; or,

3. Without design to effect death, by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a robbery, rape, burglary, larceny or arson in the first degree; or,

4. By maliciously interfering or tampering with or obstructing any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure or appliance pertaining to or connected with any railway, or any engine, motor or car of such railway.

Murder in the first degree shall be punishable by imprisonment in the state penitentiary for life. R&B §2392; L. '13, ch. 167.

135 §279.

The indictment sufficiently negatives that the killing was without justification, by alleging that it was "wilfully, unlaw-

fully, feloniously and with a premeditated design," State v. Seifert, 65 W. 596.

135 §285.

If a homicide is neither excusable or justifiable, it must at least be manslaughter, State v. Blaine, 64 W. 122.

Covers wide range of culpability, State v. Beebe, 66 W. 463.

135 §307.

"Reasonable ground to believe" is more favorable instruction than statute, State v. Bowinkelman, 66 W. 396.

135 §321.

A conviction of assault in the third degree can be had under an information charging an assault upon a pregnant woman by producing an unnecessary abortion, resulting in her death and that of her unborn child, State v. Hamilton, 69 W. 561.

135 §323.

"Great bodily injury" is question for jury—Instruments of injury, State v. Davis, 72 W.

Conviction under subd. 4 may be had on

an information under 135 §321, State v. Copeland, 66 W. 243.

An information under subd. 6 is sufficient without stating the precise facts constituting the attempt, State v. Harsted, 66 W. 158.

135 §327.

Is not applicable where the deceased was only guilty of a trespass, with no intent to commit a robbery, State v. Blaine, 64 W. 122.

135 §331.

Information need not set out physical acts done, State v. Baker, 69 W. 589.

Conviction sustained on the evidence, State v. Brache, 63 W. 396.

135 §343.

Foreign publication circulated in this state included in statute, State v. Piver, 74 W.

Court must be judge of libelous character of publication, State v. Darwin, 63 W. 303.

The publication of plaintiff's photograph with story of father's crime is not a libel, Hillman v. Star Pub. Co., 64 W. 691.

Supplementary—AN ACT relating to false statements, and making the same a gross misdemeanor. Approved March 17, 1913. Laws '13, ch. 97.

135 §364. **Slander of Bank.** §1. Any person who shall wilfully and maliciously instigate, make, circulate, or transmit to another or others any false statements concerning the moral or financial condition or affecting the solvency or financial standing of any bank, banking institution or trust company doing business in this state, or who shall wilfully counsel, aid, procure, or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a gross misdemeanor.

135 §365.

Corroboration of force necessary when an element, State v. Raymond, 69 W. 98.

135 §367.

Evidence is admissible of the previous reputation of the prosecutrix as to unchastity, to affect her credibility as a witness, State v. Workman, 66 W. 292.

135 §369.

Penetration sustained on evidence of repeated attempts and pain to child, State v. Kincaid, 69 W. 273.

135 §375.

It is error, in an action for calling a defendant a "pimp," to refuse to instruct that the charge was justified if plaintiff lived with prostitutes, Eddy v. Cunningham, 69 W. 544.

135 §381.

Complaints of prosecutrix soon after rape held corroboration, State v. Holcomb, 73 or 74 W.

Requires corroborating evidence from an independent source having a tendency to connect the accused with the crime, State v. Gibson, 64 W. 131.

Actual physical restraint is not necessary, moral persuasion being sufficient, State v. Stone, 66 W. 625.

Proof of the immoral character of the house to which prosecutrix was taken for prostitution is seemingly sufficient corroboration, State v. Stone, 66 W. 625.

Corroboration as to force necessary where force is element of offense under 135 §365, State v. Raymond, 69 W. 98.

AN ACT concerning domestic relations and to prevent and punish family desertion or non-support of wife or child or children, and providing for support bonds and suspension of trial and sentence, and authorizing and directing the county commissioners to work convicted persons and to pay certain monies to the wife, or child, or children for the labor performed by convicted persons; and providing the evidence required to prove, and the punishment of such offenses, and repealing (135 §383) sections 2444 and 5933 of Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 6, 1913. Laws '13, ch. 28.

135 §383. **Abandonment of Wife and Child.** §1. Every person who,

1st: Having any child under the age of 16 years dependent upon him or her for care, education or support, deserts such child in any manner whatever, with intent to abandon it;

2nd: Wilfully omits, without lawful excuse, to furnish necessary food,

clothing, shelter, or medical attendance for his or her child or children or ward or wards;

3rd: Having sufficient ability to provide for his wife's support, or who is able to earn the means for such wife's support, who wilfully abandons and leaves his wife in a destitute condition, or who refuses or neglects to provide such wife with necessary food, clothing, shelter, or medical attendance, unless by her misconduct he is justified in abandoning her.

Shall be guilty of a gross misdemeanor.

135 §383.

Repealed L. '13, ch. 28, §4.

non-support, State v. Coolidge, 71 W.

Evidence held to support conviction,

Where a divorced husband was ordered State v. McPherson, 72 W.

to pay a certain sum for the support of a minor child awarded to the wife, he could not be prosecuted for the child's legal age, State v. McPherson, 72 W.

Punishing husband for non-support ap-

plies to marriages voidable for want of

legal age, State v. McPherson, 72 W.

135 §384. Orders to the Court—Payments to Wife or Children. §2. In any case numerated in the previous section, the court may render one of the following orders:

1st: Should a fine be imposed it may be directed by the court to be paid in whole or in part to the wife, or to the guardian, or to the custodian of the child or children, or to an individual appointed by the court as trustee.

2nd: Before trial, or after conviction, with the consent of the defendant, the court, in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly during such time as the court may direct, to the wife or to the guardian, or custodian of the minor child or children, or to an individual appointed by the court, and to release the defendant from custody or probation during such time as the court may direct, upon his or her entering into a recognizance, with or without sureties, in such sum as the court may direct. The condition of the recognizance to be such that if the defendant shall make his or her appearance in court whenever ordered to do so, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise to remain in full force and effect.

3rd: Where conviction is had and sentence to imprisonment in the county jail is imposed, the court may direct that the person so convicted shall be compelled to work upon the public roads or highways, or any other public work, in the county where such conviction is had, during the time of such sentence. And it shall be the duty of the board of county commissioners of the county where such conviction and sentence is had, and where such work is performed by persons under sentence to the county jail, to allow and order the payment, out of the current fund, to the wife, or to the guardian, or the custodian of the child or children, or to an individual appointed by the court as trustee, at the end of each calendar month, for the support of such wife, child, or children, ward or wards, a sum not to exceed one and fifty one-hundredths dollars for each day's work of such person.

135 §384a. Evidence. §3. Proof of the abandonment or non-support of a wife, or the desertion of a child or children, ward or wards, or the omission to furnish necessary food, clothing, shelter, or medical attendance for a child or children, ward or wards, is prima facie evidence that such abandonment or non-support, or omission to furnish food, clothing, shelter, or medical attendance is wilful. The provisions of section one are applicable whether the parents of such child or children are married or divorced and regardless of any decree made in said divorce action relative to alimony or to the support of the wife or child or children.

135 §385.

Minor lawfully bought and sold liquor under licenses, Lackaff v. Hinz, 73 W.

contributory negligence whether or not the parents misrepresent the child's age, Glucina v. Goss Brick Co., 63 W. 401.

135 §389.

Employer of child under 14 years old assumes all risk of injuries regardless of

135 §391.

Case reversed for error in excluding evidence of purpose of operation, State v.

Pryor, 74 W.

135 §409.

Requires a complaint by the husband or wife before a magistrate, *State v. La Bounty*, 64 W. 415.

135 §432.

Information must allege capacity of person charged, *State v. Hardwick*, 63 W. 35.

135 §437.

Information sustained under 135 §695, *State v. Ferrato*, 72 W.

135 §521.

Imposes the penalty without regard to wrongful intention, *State v. Burnam*, 71 W.

The managing agent may be criminally liable for the sale of impure milk, *State v. Burnam*, 71 W.

135 §557.

A complaint in justice court charging that defendant, at a stated place, drove an automobile in excess of twenty miles an hour, is insufficient, *State v. Hall*, 64 W. 99.

135 §621.

Not invalid because indefinite, *State v. Fox*, 71 W.

135 §649.

Sentence of 5 to 7 years under former

statute held, not abuse, *State v. Mallahan*, 65 W. 287.

135 §659.

Crime may be double and include uttering etc. under 135 §667, *State v. McBride*, 72 W.

135 §695.

Larceny of indorsed certificate of deposit sustained, *State v. Garland*, 65 W. 666.

Any trick, artifice, or cunning calculated to win confidence and to deceive, by conversation, conduct or suggestion, is a "bunco game," *State v. Ferrato*, 72 W.

State officer who misappropriates money of the state is guilty of larceny, *State v. Snow*, 65 W. 353.

135 §713.

Check though probably valueless is subject of extortion, *State v. Barr*, 67 W. 87.

The crime of extortion is established if the demand was made on a threat, although violence may have been done subsequently, *State v. Barr*, 67 W. 87.

135 §715.

Confession obtained by violation of section inadmissible in evidence, *State v. Miller*, 68 W. 239.

Supplementary—AN ACT relating to untrue, deceptive and misleading advertisements, and providing a penalty for the violation thereof... Approved March 6, 1913, Laws '13, ch. 34.

135 §754. **Fraudulent Advertising.** §1. Any person, firm, corporation or association who, with intent to sell or in any wise dispose of merchandise, securities, service, or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, hand-bill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor: Provided, That the provisions of this act shall not apply to any owner, publisher, agent, or employe of a newspaper for the publication of such advertisement published in good faith and without knowledge of the falsity thereof.

135 §773.

Authorizes the conviction of the president of a bank for the receipt of deposits by the cashier when the president was absent, if he knew the bank was insolvent,

State v. Welty, 65 W. 244.

Officer guilty if by reasonable diligence in his duties he could have known of the insolvent condition, *State v. Welty*, 65 W. 244.

Supplementary—AN ACT prohibiting persons from going or being upon certain portions of rights of way of railroads and interurban electric roads, providing penalties for violation thereof and requiring certain signs to be erected at highway crossings. Approved March 20, 1913. Laws '13, ch. 128.

135 §822. **Trespass on Double Track or Third Rail Electric Track.** §1. It shall be unlawful for any person to go upon or be upon that portion of any railroad right of way upon which is constructed and operated more than one main line track or upon which is constructed and operated an electric interurban line of one or more tracks where the electricity is transmitted by a third rail.

135 §822a. **Crossings Excepted.** §2. The foregoing section shall not be construed to include that part of any right of way embraced in any highway crossing or any lawful private crossing; and shall not be construed to prohibit officers or employees of any such railroad or public officers from going or being upon any portion of the right of way in the performance of their duties.

135 §822b. **Warning Signs.** §3. The Public Service Commission of Washington shall require any company operating such a railroad as is described in section one of this act to erect and maintain upon such part of its line, at every point where a highway crosses such line, a sign or a warning, in form to be prescribed by such commission.

135 §822c. **Penalty.** §4. Any person violating the provisions of section one of this act shall be guilty of a misdemeanor.

135 §823. **Trespass on Land of Another.** §413. Every person who shall go upon the land of another with the intent to vex or annoy the owner, or occupant thereof, or to commit any unlawful act, or shall enter upon the enclosed land of another for the purpose of hunting or fishing without having first obtained the permission of the owner or occupant of said land, or shall enter upon any land of another bounded on one or more sides by water when notices not to trespass thereon have been posted as often as every 700 feet on or near the other boundaries thereof for either of said purposes, or shall wilfully go or remain upon any land after having been warned by the owner or occupant thereof not to trespass thereon, shall be guilty of a misdemeanor.

An entryman on land under the laws of the United States shall be deemed an owner within the meaning of this section.

Enclosed land shall for the purpose of this act mean any land fenced either with a lawful fence or with such a fence as is usually used in the neighborhood of such land. R&B §2665; L. '13, ch. 139.

135 §865.

Note on preceding page of Code.

135 §869.

Is constitutional and extends to fortune telling, though the principles of astrology be followed, State v. Neitzel, 69 W. 567.

135 §§875-7.

Repealed L. '13, ch. 15 §1.

135 §891.

Not necessary for state to reply to criminal defense, State v. Lewis, 31 W. 515.

135 §897.

Must charge defendant as accessory if proof of being accessory alone is relied upon for conviction, State v. Beebe, 66 W. 463.

One charged with first degree murder as accessory before fact cannot be convicted of manslaughter when evidence shows he was not present at commission of crime, but merely conspired, State v. Robinson, 12 W. 349.

Being present at homicide, aiding and abetting, sustains second degree murder verdict, State v. Robinson, 12 W. 491.

Counseling and abetting manslaughter sustains verdict as principal State v. McFadden, 48 W. 259.

135 §905.

Where evidence shows killing in one county though body found in another, first county has jurisdiction, State v. Fillpot, 51 W. 223.

135 §909.

No less crime to murder foreigner than citizen, Smith v. U. S., 1 W. T. 262.

State court has jurisdiction over alien murderer, State v. Champoux 33 W. 339.

Jurisdiction over territory jointly occupied by two nations under treaty, Watts v. Territory, 1 W. T. 288.

135 §911.

Information charging homicide in certain county need not allege place of death—evidence, State v. Baldwin, 15 W. 15.

135 §923.

Not necessary that the complaint, affidavit or search warrant contain the name of the person whose premises are to be searched, Olson v. Haggerty, 69 W. 48.

135 §925.

Court cannot presume sheriff obtained gambling apparatus wrongfully, Way v. Territory, 1 W. T. 415.

135 §931.

Reads 135 §231 in Code.

135 §937.

Extradited prisoner may be tried for offense slightly different from charge, Harland v. Territory, 3 W. T. 131.

135 §947.

Objection not taken at impaneling is waived, Clarke v. Territory 1 W. T. 68; Blanton v. State, 1 W. T. 265.

135 §949.

Court should terminate proceedings on discovery of void impaneling of grand jury—qualifications of jurors, Yelm Jim v. Territory, 1 W. T. 63; Clarke v. Territory, 1 W. T. 68.

135 §981.

Where accused voluntarily appears before the grand jury, his name need not be endorsed on the indictment as witness, State v. Kulbe, 67 W. 21.

135 §983.

Jury may not award costs, In re Permstick 3 W. 672.

Witnesses indorsed in murder case after jury sworn, State v. Pepoon 62 W. 635.

135 §997.

Accused is not "witness," *State v. Kulbe*, 67 W. 21.

135 §999.

Amended information must be reverified, *State v. Van Cleve*, 5 W. 642.

Verification by deputy sufficient, *Hammond v. State*, 3 W. 171.

Verification as affiant "verily believes" sufficient, *State v. Cronin*, 20 W. 512.

135 §1009.

Where defendant waives reading of an amended information and enters plea without objecting to its lack of verification, he waives such objection, *State v. Stone*, 66 W. 625.

135 §1015.

State is not required to anticipate defenses, *State v. Seifert*, 65 W. 596.

135 §1016.

An information from which defendant can readily understand the offense charged is sufficient, *State v. Garland*, 65 W. 666.

Information sufficiently shows prosecution in name of state by caption, *State v. Devine*, 6 W. 587.

Indictment is plain statement of facts, *State v. Womack*, 4 W. 19.

Court takes judicial notice that Seattle is in King County, *Schilling v. Territory*, 2 W. T. 283; *State v. Fetterly*, 33 W. 499; or that a day named was Sunday, *State v. Bergfeldt*, 41 W. 234.

135 §1025.

When election is made between several acts conviction only on one chosen, *State v. Moss*, 73 W.

"On or about" certain date sufficient, *State v. Williams*, 13 W. 335.

135 §1027.

Error in name immaterial where defendant not mislead, *State v. Ewing*, 67 W. 395.

In charge for employing female illegally need not name female so employed, *State v. Considine*, 16 W. 358.

135 §1033.

"Malicious" supplied by "of his premeditated malice," *State v. Acles*, 8 W. 462.

Substantially in statutory language sufficient, *State v. Knowlton*, 11 W. 512; *State v. Turner*, 10 W. 94; *State v. Fetterly*, 33 W. 599.

Dam used for "agricultural" purposes sufficiently alleges "irrigation" purposes, *State v. Tiffany*, 44 W. 602.

135 §1035.

Need not charge same crime as that for which accused was committed upon preliminary examination, *State v. Myers*, 8 W. 177.

May charge several crimes constituting one offense, *State v. Holedger*, 15 W. 443; *State v. Elswood*, 15 W. 453.

Statute prescribes "willfully or maliciously," charge of "maliciously" alone sufficient, *State v. Tiffany*, 44 W. 602.

Useless allegations do not invalidate, *State v. Acles*, 8 W. 462.

"Willful" commission of act does not imply that it was done knowingly, *State v. Zenner*, 35 W. 249.

Need not set out conditions the law prescribes, *State v. Munson*, 7 W. 239; see *Leschi v. Territory*, 1 W. T. 13.

Information which omits name of de-

fendant in charging part but names him in accusing part sufficient, *Witcher v. State*, 2 W. 286.

Information sufficient if man of common understanding can determine with what he is charged, *State v. Nelson*, 39 W. 221; *State v. Davis*, 43 W. 116.

Information amendable on leave of court to which case transferred, *State v. Lyts*, 25 W. 347.

Arson: Need not allege that dwelling house was place of abode of any person, *McClaine v. Territory*, 1 W. 345; see *State v. Biles*, 6 W. 186.

Assault: Must set forth acts constituting, *Watson v. State*, 2 W. 504.

"Personal injury" sufficient where statute prescribes "bodily injury," *State v. Clayborne*, 14 W. 622.

Burglary: Charge of grand larceny by breaking into and entering office sufficient *State v. Sufferin*, 6 W. 107; *State v. Miller*, 3 W. 131.

Conspiracy: Indictment charging crime as at common law sufficient, *Bradshaw v. Territory*, 3 W. T. 265.

Embezzlement: Must charge that conversion took place in county, *State v. Mayberry*, 9 W. 194.

False Pretenses: Need not set out time, character or denomination of money obtained, *State v. Knowlton*, 11 W. 512.

Sufficient if it shows parting with property through false representations, *State v. Boklen*, 14 W. 403.

Forgery: Need not set forth copy of forged instrument, *State v. Wright*, 9 W. 96. See *White v. Territory*, 1 W. 279.

Gaming: Alleging gambling game by name without description insufficient, *Harland v. Territory*, 3 W. T. 132.

Charge against proprietor need not allege with whom game played, *State v. Wilson*, 9 W. 16.

Larceny: Need not allege in whose possession property was, *State v. Coss*, 12 W. 673.

Where name of owner alleged it is material allegation, *State v. Van Cleve*, 5 W. 642.

Need not allege value of each of several articles, *State v. Brew*, 4 W. 95, but see, *McCarty v. State*, 1 W. 377.

Surplusage does not invalidate, *State v. Kyle*, 14 W. 550.

Murder—Manslaughter: Jury may determine degree, *Leschi v. Territory*, 1 W. T. 13.

General intent to kill sufficient, *State v. Barr*, 11 W. 482.

Need not allege act was unlawful, felonious or malicious, *State v. Nordstrom*, 7 W. 506; *Schilling v. Territory*, 2 W. T. 283.

Knife presumed to be deadly instrument, *State v. Regan*, 8 W. 506.

Must allege killing done purposely etc., *State v. Ge*, 1 W. 275, *State v. Me*, 1 W. 276.

Failure to allege killing was willfully or violently done charges involuntary manslaughter, *State v. Gile*, 8 W. 12.

Sufficiency of charge against doctor for killing by starvation, *State v. McFadden*, 48 W. 259.

Perjury: Must describe proceedings at which perjury committed, *State v. See*, 4 W. 344.

135 §1103.

Accused not a "witness," *State v. Kulbe*, 67 W. 21.

135 §1119.

Denial of separate pleas of not guilty and former jeopardy sustained, *State v. Elliott*, 69 W. 62.

135 §1121.

Change of name in new indictment after acquittal, not ground for plea of former jeopardy, *State v. Friedrich*, 4 W. 204. Nor is new indictment under different statute for same offense, *State v. Reiff*, 14 W. 664.

135 §1125.

Substitution should be permitted where plea entered under promises and communication with friends prevented, *State v. Allen*, 41 W. 63.

135 §1145.

Defendant's credibility may be attacked, *State v. Peeples*, 71 W.

135 §1151.

Obtained by threats of prosecutor inadmissible, *State v. Miller*, 68 W. 239.

Instruction that confession inadmissible unless voluntary, sustained, *State v. Wilson*, 68 W. 464.

135 §1153.

Personal effects of prisoner may be taken from his person and used as evidence, *State v. Nordstrom* 7 W. 506.

In embezzlement, pleadings of former civil action may not be used as evidence, *State v. Hopkins* 13 W. 5.

Maps may be admitted on identification of hostile witness, *State v. White*, 10 W. 611. But see, *Leonard v. Territory*, 2 W. T. 381.

Stenographic notes of former trial cannot be used to impeach witness, *State v. Freidrick* 4 W. 205.

Clothing of deceased admissible in murder trial, *State v. Cushing*, 14 W. 527.

Stolen money need not be put in evidence in larceny trial, *State v. Munson*, 7 W. 239.

In trial for resisting arrest, evidence of innocence of charge for which arrested inadmissible, *State v. Symes*, 20 W. 484.

Letter by conspirator admitted without proof of handwriting, *State v. Dilley*, 44 W. 207. See *State v. Fillpot*, 51 W. 223.

Burden of proof never on defendant to show nonexistence of facts constituting crime, *State v. Conahan*, 10 W. 268.

In bigamy, burden on defendant to show invalidity of first marriage, *State v. Kniffen*, 44 W. 485.

Credibility of prostitute as witness is for jury to determine, *State v. Hill*, 45 W. 694.

Conviction of murder will not be set aside because evidence circumstantial, *State v. Smith*, 9 W. 341; see *State v. Craemer*, 12 W. 217.

Defendant in arson must be connected with crime by circumstances inconsistent with his innocence, *State v. Plenick*, 46 W. 522.

Circumstantial evidence must not admit possibility of commission of crime by another, *State v. Pagano*, 7 W. 549; see also *State v. Downing*, 24 W. 340.

Uncorroborated evidence of accomplice generally insufficient, *Edwards v. State*, 2 W. 291.

Necessity of spring guns question for jury, *State v. Barr*, 11 W. 482; see, *State v. Marfaudille*, 48 W. 117.

In trial for passing check with no funds evidence of similar occurrences inadmissible, *State v. Bokien*, 14 W. 403.

Identification of charred corpse by neighbors admissible in murder trial, *State v. Smith*, 9 W. 341.

Presumption in arson is that burning was accidental, *State v. Plenick*, 46 W. 522.

Dying declarations cannot be excluded on account of right of accused to meet witnesses face to face, *State v. Baldwin* 15 W. 15. See, *State v. Gile* 8 W. 12; *State v. Freidrich*, 4 W. 205.

Nonexpert witness may give his opinion as to insanity of defendant, *State v. Constantine*, 48 W. 218. But see, *State v. Brooks*, 4 W. 328.

Physicians opinion as to effect of intoxication on sanity of defendant admissible, *State v. Bridgham*, 51 W. 18.

In trial for obtaining money by false pretenses question is effect of pretense on person defrauded—other considerations, *State v. Knowlton*, 11 W. 512.

Statements made behind closed door are not made in presence of one in adjoining room, though they may they may have been heard, *State v. Baruth*, 47 W. 283.

On trial for murder of woman, evidence of simultaneous killing of child admissible, *State v. Craemer*, 12 W. 217.

In assault, evidence of quarrels admissible, *State v. Accles*, 8 W. 462.

Where murder results from conspiracy to terrorize community, evidence that knife held by another than one charged in indictment not variance, *State v. Brown*, 6 W. 609.

Where information charges homicide, by means of unknown "heavy blunt instrument," evidence of oar admissible, *State v. Carey*, 15 W. 549.

Proof of embezzlement in certain county may be by inference, *State v. Whiteman*, 9 W. 402; *State v. Gilluly*, 50 W. 1.

Evidence of good character of accused always admissible, *Klehn v. Territory*, 1 W. 584. But must be of a time not too remote from that of crime, *State v. Barr*, 11 W. 481; see also, *State v. Cushing*, 14 W. 527; *State v. Clen*, 49 W. 273.

Good character of deceased in homicide trial not admissible unless assailed, *State v. Eddon*, 8 W. 292.

If defendant testifies, he is subject to rules governing other witnesses, *Thompson v. Territory*, 1 W. T. 548.

First wife not competent witness in bigamy trial, *State v. Kniffen*, 44 W. 485.

Interpreter should not be witness, *State v. Thompson*, 14 W. 285; *State v. Michel*, 20 W. 162.

Expert testimony as to effects of morphine on credibility of witness inadmissible, *State v. Robinson*, 12 W. 491; but see, *State v. White*, 10 W. 611.

Where statements of witness are offered to impeach his testimony, his attention must first be directed to the time, place and person involved in the supposed contradiction, *Thompson v. Territory*, 1 W. T. 547; see, *State v. Walters*, 7 W. 246.

Proof of former confinement in county

jail irrelevant, *State v. Payne*, 6 W. 563.

Exclusion of impeaching testimony not error where a number of other witnesses have corroborated the testimony, *State v. Holmes*, 12 W. 169.

In trial for rape, evidence that prosecutrix was habitually away from home at night from 12 to 4 o'clock admissible where prosecutrix uncorroborated except by evident pregnancy, *State v. Mobley*, 44 W. 549.

Evidence of threats made by deceased against defendant in homicide admissible, *State v. Cushing*, 14 W. 527. But see, *State v. McGonigle*, 14 W. 594.

135 §1155.

The granting of a change of venue on the ground of local prejudice rests in the discretion of the trial court, *State v. Welty*, 65 W. 244.

135 §1171.

Challenge not taken in manner required but entertained by court should be sustained if meritorious, *State v. Payne*, 6 W. 563.

135 §1181.

Does not, in cases not capital, preclude the entry of judgment upon a verdict received in the absence of the defendant, if the defendant, out on bail, voluntarily absents himself, *State ex rel. Gabe v. Main*, 66 W. 381.

135 §1187.

Separation of juror in felony cases is error, *State v. Bennett*, 71 or 72 W.

135 §1191.

Confines evidence to acts for which individual defendant alone is responsible, *State v. Beebe*, 66 W. 463.

Demand for separate trial sufficient when made within reasonable time after knowledge that state would ask for joint trial, *State v. Moran*, 66 W. 588.

135 §1205.

Conviction of lesser crime, 135 §21.

Assault with weapon, *State v. Copeland*, 66 W. 244.

135 §1215.

Jury can decide only whether or not defendant is guilty, *In re Permstick*, 3 W. 672.

Immaterial who prepares form of verdict, *State v. Klein*, 38 W. 475.

135 §1223.

Motion under subd. 2, may be made after two trials on merits without objection, *State v. Fearnster*, 12 W. 461; see, *State v. Barkuloo*, 18 W. 52.

135 §1239.

It is not necessary that a defendant out on bail be present upon receipt of a verdict of acquittal, *State ex rel. Gabe v. Main*, 66 W. 381.

135 §1261.

Commitment not necessary to conviction for attempt to escape jail, *State v. Hatfield*, 66 W. 9.

135 §1301.

§2266 should read 135 §1299.

Imposes judicial discretion on court, *State v. Johnson*, 69 W. 612.

135 §1369.

One charged as an habitual criminal need not be tried in five days, *State v. Alexander*, 65 W. 488.

135 §1375.

Judgment cannot be vacated for errors in commitment—errors, how reviewed, *State v. Tenney*, 63 W. 486.

135 §1377.

Where accused filed no plea of insanity before the case was submitted to the jury the question was waived, *State v. Wilson*, 69 W. 235.

135 §1491.

Not necessary to charge that the "spirited liquors" were such as would "produce intoxication," *State v. Bailey*, 67 W. 336.

One who, as an agent of an Indian, procures intoxicating liquor for such Indian, is guilty, *State v. Reese*, 69 W. 437.

135 §1511.

Was not repealed by 135 §405, *State v. Nakashima*, 62 W. 686.

135 §1527.

Contractor leaving opening not a nuisance owner is not liable, *Cary v. Sparkman & McLean Co.*, 62 W. 363.

135 §1599.

Section is general in application—applies to primary, *State v. Robinson*, 69 W. 172.

135 §1625. **Bankers' Sign, Exhibiting Wrongfully.** §36. Any person or persons who shall put up, or cause to be put up, or exhibit, any sign or advertisement, purporting thereby to be an incorporated bank, or shall do business under a corporate name when they are not such, shall, on conviction thereof, be adjudged guilty of a misdemeanor, and punished by a fine not exceeding two hundred dollars. R&B §3340; L. '13, ch. 147.

135 §1691. **Trespass by Sheep.** §1. It shall be unlawful in this state for sheep to enter any land or lands, enclosed or unenclosed, belonging to or in the possession of any person other than the owner of such sheep, unless by the consent of the owner of said land other than the public lands of the United States. R&B §3197; L. '13, ch. 159.

135 §1693. **Penalty.** §2. Any person, being the owner or having in his possession, charge, or control, as herder, or otherwise, any sheep, who shall herd or drive such sheep upon the lands of another for the purpose of pasture, against the consent of the owner of such lands, shall be deemed guilty of a misdemeanor. R&B §3198; L. '13, ch. 159.

AN ACT relating to houses or places of lewdness, assignation and prostitution, to declare the same to be nuisances, to enjoin the person or persons who conduct or maintain the same, and the owner or agent of any build-

ing or property used for such purposes, and to assess a tax against the person or persons maintaining said nuisance and against the building or property and owner and agent thereof. Approved March 19, 1913. Laws '13, ch. 127.

135 §1701. **House, Etc., of Prostitution a Nuisance.** §1. Whoever shall erect, establish, maintain, continue, use, own or lease any building or place used for the purpose of lewdness, assignation or prostitution is guilty of a nuisance, and the building or place, or the ground itself, in or upon which lewdness, assignation or prostitution is conducted, permitted or carried on, continued or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

135 §1703. **Action—Injunction—Notice.** §2. Whenever a nuisance exists, as defined in this act, the prosecuting attorney or any citizen of the county may maintain an action in equity in the name of the State of Washington upon the relation of such prosecuting attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or the agent of the building or ground upon which said nuisance exists. In such action, the court or judge may upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary injunction if it shall be made to appear to the satisfaction of the court or judge that such nuisance exists. At least three days' notice in writing shall be given the defendant of the hearing of the application. Any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided.

135 §1705. **Evidence—Dismissal—Continuance—Costs.** §3. In such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the prosecuting attorney in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, he may direct the prosecuting attorney to prosecute such action to judgment, and if the action is continued more than once, upon the application of either party, any citizen of the county or the prosecuting attorney may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen who originally brought such action.

135 §1707. **Contempt—Punishment.** §4. In case of the violation of any injunction granted under the provisions of this act, the court or judge may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause an attachment to issue, under which the defendant shall be arrested. The trial may be had upon affidavit, or either party may demand the production and oral examination of the witnesses. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment.

135 §1709. **Abatement—Costs.** §5. If the existence of the nuisance be established in an action as provided in this act, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments or movable property used in conducting the nuisance, and may direct the sale thereof in the manner provided for the sale of chattels under execution and effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period not exceeding six months. If any person shall break and enter or use a building or place so directed to be closed, he shall be punished as for contempt as provided in the preceding section. For removing and selling all movable property, the officer shall be entitled to charge and receive the same fees as he

would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

135 §1711. Proceeds of Property Sold, Disposed of. §6. The proceeds of the sale of the personal property, as provided in the preceding section, shall be applied in payment of the costs of the action and abatement, and the balance, if any, shall be paid to the person owning such property prior to said sale.

135 §1713. Suspension of Judgment—Lien. §7. If the owner appears and pays all costs of the proceedings, and files a bond with sureties to be approved by the clerk in the full value of the property, to be ascertained by the court conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court or judge may, if satisfied of his good faith order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement cancelled so far as same may relate to said property, and if the proceeding be an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this action [section] shall not release it from any judgment, lien, penalty or liability to which it may be subject by law

135 §1715. Fine of Property, Tax to Pay. §8. Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purposes prohibited by this act, there shall be assessed against said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of three hundred dollars. The assessment of said tax shall be made by the county assessor of the county in which the nuisance exists and shall be made within three months from the date of the granting of the permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the sheriff of the county, and a return of said assessment shall be made to the county treasurer. Said tax may be enforced and collected in the manner prescribed for the collection of taxes under the general revenue laws and shall be a perpetual lien upon the real property, and personal property not already sold as provided by this act, used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any penalties provided by law, and when collected shall go into the county general fund.

139 §17 passim §75.

Repealed 9 §117 Supp.

139 §57.

Note on page 835 of Code.

139 §109.

Is not prerequisite to prosecutions, State v. Burnam, 71 W.

TITLE 143—DEEDS.

143 §1.

Resulting trust may be, but express cannot be proven by parol, Arnold v. Hall, 72 W.

Deed in blank conveys title, Clemmons v. McGeer, 63 W. 446.

Part performance takes parol partition of lands out of the statute, Briggie v. Cox, 72 or 73 W.

Recovery for improvements on breach of oral contract, Ernst v. Schmidt, 66 W. 452.

Oral authority and broker's contract ratified—specific performance, McLeod v. Morrison & Eshelman, 66 W. 683.

Possession must be in execution of oral

contract to take case out of statute, Blakely v. Sumner, 62 W. 206.

143 §3.

Applies to lease for year with renewal option, Anderson v. Frye & Bruhn, 69 W. 89.

Acknowledgment of a mortgage which the mortgagor inadvertently failed to sign, which contains his name as grantor, is equivalent to signing it, American Bank v. Helgesen, 64 W. 54; overruled id 67 W. 572.

143 §7.

Parol evidence admissible to show ratification of an agent's contract under seal, McLeod v. Morrison & Eshelman, 66 W. 683.

143 §11.

Title sufficient, *Seattle Nat. Bank v. Ally*, 66 W. 610.

Bank v. Ally, 66 W. 610.

Assignee failing to record assignment, though second recorded first, McDonald & bona fide purchaser may depend on mortgagee's satisfaction of record, *Seattle Nat.*

First mortgage executed of two executed for preexisting debts has priority
Co. v. Johns, 62 W. 521.

143 §13. **Acknowledgement, Who May Take.** §2315. Acknowledgements of deeds, mortgages, and other instruments in writing may be taken, in this state, before a judge of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the superior court in this state, or the clerk thereof, or the deputy of such clerk, or before a justice of the peace, or a county auditor, or the deputy of such auditor, or a qualified notary public, or any qualified United States commissioner appointed by any district court of the United States for the State of Washington. All deeds, mortgages, and other instruments in writing at any time heretofore acknowledged according to the provisions of this act are hereby declared legal and valid, insofar as such acknowledgement is concerned. R.&B. §8754; L. '13, ch. 14.

143 §43.

An after-acquired title of mortgagors inures to the benefit of the mortgagee, although the mortgage contained no express warranty, where it contained a granting clause, which would in a deed constitute a covenant sufficient to pass to

a grantee an after-acquired title, *American Bank v. Helgesen*, 64 W. 54.

After acquired title inures to mortgagee, *American, etc., Co. v. Helgesen*, 64 W. 54.
After acquired title inures to grantee, *Tolliver v. Great No. Ry. Co.*, 187 Fed. 795.

TITLE 147—DENTISTRY.

147 §23. **Pay of Board—Fees to Be Paid In.** §10. Each member of the board of dental examiners shall receive a compensation of five dollars a day for each day in which he is actually and necessarily engaged in attendance upon the meetings of the board, and in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meetings; all such compensation and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers to be approved by a majority of said board as in the case of state officers. The secretary of said board shall receive a compensation to be determined by said board not to exceed \$100 per annum. He shall give surety bond to be approved by and deposited with the auditor of the state in the sum of \$1,000. The costs of said bond shall be paid by the state. All money received or collected by said board or any member or officer thereof during any month shall be turned over to the state treasurer before the 10th day of the succeeding month together with a verified statement showing the sources from which such money was derived. The board shall make an annual report of its proceedings to the governor on or before the first day of January of each year together with an account of money received and disbursed by them pursuant to this act. R.&B. §8423; L. '13, ch. 80.

TITLE 151—DIKES.

Supplementary—AN ACT providing for the issuance of bonds by diking districts on petition of sixty per cent. in acreage, of the property owners of such district, to provide for the expense of repairs, improvements, maintenance and the purchase of machinery and other appliances. Approved March 21, 1913. Laws '13, ch. 156.

151 §26. **Bonds for Extraordinary Repairs.** §1. Whenever by reason of any extraordinary occurrence or other casualty there occur such changes in conditions as to warrant, in the opinion of the commissioners of any dyking district, an estimate for making repairs and improvements, including the

yearly maintenance expense in an amount equal to twenty-five per cent. of the estimated cost of the original improvements, as provided for in (151 §25) section 9, chapter CX-VII of the Session Laws of 1895, the funds therefor may be provided by the issuance of bonds of said dyking district, payable in not to exceed ten years, and to pay the same, such commissioners shall make a levy extending over such period of time and in such amount as shall be necessary to take care of such bonds and interest, and such levy when made shall state the year for which it is made and the amount thereof, and thereafter, the county auditor shall each year extend such levy without any further orders from said commissioners: Provided, however, That if for any cause whatsoever, said levy shall not be sufficient to take care of said bonds and interest or pay said fixed estimate a further levy shall be made for that purpose. Said bonds shall be sold at not less than par and shall bear interest not to exceed seven per cent per annum, and the proceeds thereof shall be used in such repairs, improvements or maintenance or warrants issued in payment therefor and for no other purpose: Provided, however, That such bonds shall only be issued when they are presented to and filed with such commissioners and shall become a part of their record, a petition of property owners owning at least sixty per cent. of all the acreage in such district requesting the issuance of such bonds.

151 §33. Lands Omitted Brought In—Trial—Appeal. §13. If at any time it shall appear to the board of dyking commissioners that any lands within or without said district as originally established are being benefited by the diking system of said district and that said lands are not being assessed for the benefits received, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the diking system of said district, and said board of diking commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the diking system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessments on which should be equalized, stating the estimated amounts of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land, and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessment or equalizing the assessments upon lands already assessed, or both.

Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other diking district, said summons shall also be served upon the commissioners of such other diking district.

In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other diking district, and the diking commissioners of such other district believe that the maintenance of the dike or dikes of such other district is benefiting lands within the district instituting the proceedings, said diking commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the diking system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the diking system of their district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the diking district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention.

In case the owner of any such new lands sought to be assessed in said pro-

ceedings shall be maintaining a private dike against salt or fresh water for the benefit of said lands, and shall believe that the maintenance of such private dike is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other diking district and are being assessed for the maintenance of the dikes of such other district, and the owner of such lands believes that the maintenance of the dike or dikes of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the

151 §33.

condemnation cannot be considered on ap-

Errors going to the validity of district peal from final judgment, Calispel Dist. v. organization or to the regularity of the McLeish, 63 W. 331.
proceedings leading up to the judgment of

benefits accruing from the maintenance of the respective dikes may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various dikes benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such dikes, and may interplead in said proceeding such other diking district in which his lands sought to be assessed in said proceedings are being assessed for the maintenance of the dike or dikes of such other district.

No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence.

Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the dike or dikes to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any dike, structure or improvement, and to credit, or charge, as the case may be, to each tract so situated as to effect any other tract or tracts, or having improvements or structures thereon or easements granted in connection therewith effecting any other tract or tracts included in such proceedings, and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the diking commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the future maintenance of any dike or dikes described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or itself aggrieved by any such judgment may appeal to the supreme court within thirty days after the entry thereof, and such appeal shall bring before the supreme court the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be allowed on such appeals. Nothing in this section contained shall be construed as affecting the right of diking districts to consolidation in any manner provided by law R.&B. §4107; L. '13, ch. 89.

151 §61. **Maintenance.** §27. The board of commissioners of any diking district organized under the provisions of this act shall, on or before the first day of November, of each year, make an estimate of the cost of maintenance of the diking system in such district, which estimate shall include the cost of making any necessary repairs that it might become necessary to make in the maintenance of such system. Such estimate shall be for the

succeeding year, and the amount so estimated shall be certified by the board of.....commissioners to the auditor of the county in which such district is located, on or before said date, and the amount thereof shall be levied against and apportioned to the land in such district benefited by said improvement, in proportion to the maximum benefit originally assessed, and such amount shall be added to the general taxes against said lands and collected therewith: Provided, however, That in case of emergency not in contemplation at the time of making such annual estimate the diking commissioners may incur additional obligations and issue valid warrants therefor in excess of such estimate, and all such warrants so issued shall be valid and legal obligations of the district so issuing the same. R.&B. 4121; L. '13, purposes under the provisions of this act, are hereby declared to be valid and legal obligations of the district so issuing the same. R&B §4121; L. '13, ch. 89.

AN ACT authorizing the consolidation of two or more contiguous diking districts, heretofore organized or which may hereafter be organized under the diking laws of the State of Washington. Approved March 7, 1913. Laws '13, ch. 43.

151 §129. **Consolidation of Districts—Election.** §1. That any two or more contiguous diking districts heretofore organized or which may hereafter be organized under the diking laws of the State of Washington, desiring to consolidate into one district, may, upon petition signed by the owners of real property representing a majority of the acreage therein to the commissioners of their respective districts, effect such consolidation by the commissioners of said districts so desiring to consolidate giving thirty days' notice of an election for such purpose to be held in each of said districts, setting forth in said notice the date of said election, and the object of the same, said notice to be given and posted in the same manner as notice of the annual election of commissioners, as provided in the general diking law, and the further publication of the same for at least three successive issues in a weekly newspaper published in the county in which such districts are located, and of general circulation in said districts: Provided, That where there is no newspaper so published and circulated, the publication of the notice of said election may be dispensed with.

151 §131. **Ballot.** §2. That at such election held pursuant to said notice, a printed ballot shall be furnished by the commissioners of said districts, having printed thereon:

"For consolidation of Diking District No..... and No..... (here insert numbers), to be known as 'Consolidated Diking District No. (here insert number), of..... (here insert name of county) County, Washington.'" And "Against consolidation of Diking District No. and No..... (here insert numbers)" in such form as to enable the voters to express their choice as to the proposition submitted.

151 §133. **Conduct of Election—Record of Result.** §3. That the manner of conducting said election and the hours between the opening and closing of the polls and the officers of said election shall be the same as provided in the general diking law for the annual election of officers of diking districts, and in case a canvass of the votes cast at said election shall show a majority of the votes cast in each of the districts seeking to consolidate to be in favor of consolidation, an order shall at once be entered upon the minutes of each of said districts by the commissioners thereof, showing the result of said vote cast at said election, and setting forth therein the name of such consolidated district, and a copy of the minutes so entered duly certified by the commissioners of each of said districts shall be filed, one each with the auditor and treasurer of the county within which said districts are located, and one with the clerk of the superior court of such county, to be entered and filed by the clerk of such court in the original proceedings establishing said districts, and a certified copy of such entry shall be transmitted to the secretary of state by the clerk of said court, and thereafter the territory embraced in said districts so consolidated shall be known and designated as "Consolidated Diking District No..... (here insert number) of..... (here insert name of county) County, Washington," as provided in said order, and thereafter the said district shall have the same powers and duties as

other diking districts organized under the diking laws of the State of Washington.

151 §135. **Officers of District.** §4. The diking commissioners of the districts constituting such consolidated district shall be the board of commissioners of such consolidated district and discharge the duties of such officers until the next general election for the election of diking commissioners, and until a board of commissioners for said consolidated district are elected and qualified, and thereafter the officers of said consolidated district shall be elected, qualified and perform the same duties as in case of other diking districts.

151 §137. **Debts and New Tax Levies.** §5. That in case of such consolidation all indebtedness and outstanding obligations of the districts so consolidated, and all assessments levied and moneys collected and to be collected thereunder, shall remain unaffected by said proceedings for the consolidation of the same, and the payment of such indebtedness and obligations and the expenditure of moneys collected or to be collected under such previous assessments shall be made in the same manner, based upon the same assessments and against and for the benefit of the same lands liable therefor prior to such consolidation, but the duties relating thereto shall be discharged by the commissioners of such consolidated district: Provided, however, That all assessments made for the future repair, improvement or maintenance of the diking system of said consolidated district shall be apportioned to and assessed against the land included in such consolidated district, in the same manner as though the same had been originally incorporated in one district, and in accordance with the general provisions of the diking laws relating thereto.

TITLE 155—DITCHES.

155 §3. **Districts, Formation of.** §2. For the purpose of the formation of such drainage districts a petition shall be presented to the board of county commissioners of the county in which said proposed drainage district is located, which petition shall set forth the object for the creation of said district, the number of acres to be benefited by the proposed drainage system, shall designate the boundaries thereof, shall contain the names of all the freeholders residing within said proposed district so far as known, a brief description of the proposed system of drainage, the designation of a good and sufficient outlet for the drainage of said district, which point of outlet may be within or without the boundaries of said district; the route over which said drainage system is to be constructed, together with the proposed spurs and branches, if any there may be, and the termini thereof, and shall set forth the further fact that the establishment of said district and the proposed system of drainage will be conducive to the public health, convenience and welfare, and increase the public revenue, and that the establishment of said district and system of drainage will be of special benefit to the property included therein. Said petition shall be signed by the owners of at least a majority of the acreage in the proposed district and shall pray that the same be organized under the provisions of this chapter. At the time of the filing of said petition said petitioners shall file a bond with said county commissioners running to the State of Washington, in the penal sum of five hundred (\$500) dollars, executed in behalf of petitioners by one or more sureties to be approved by the board of county commissioners, conditioned that they will pay all costs in case said district, for any reason, shall not be established. R.&B. §4138; L. '13, ch. 86.

155 §5. **Petition.** §3. Such petition shall be presented at a regular or special meeting of the board of county commissioners of said county, and shall be published for at least two weeks in two successive issues of some weekly newspaper printed and published in said county, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein, before the time at which the same is to be presented, together with a notice stating the time of the meeting at which the

same shall be presented. When such petition is presented for hearing the board of county commissioners shall hear the same, or may adjourn said hearing from time to time, not exceeding one month in all; and any person or corporation may appear before said board of county commissioners and make objections to the establishment of said district, or the proposed boundary lines thereof, and upon final hearing said board of county commissioners shall make such changes in the proposed boundaries as they may deem to be proper, and shall establish and define such boundaries, and shall ascertain and determine the number of acres of land that will be benefited by said proposed drainage system, the number of freeholders residing within said boundaries of the said proposed district, and shall find whether the proposed drainage system will be conducive to the public health, welfare and convenience, increase the public revenue, and be of special benefit to the majority of the lands included within said boundaries of the said proposed district so established by said board of county commissioners: Provided, That no changes shall be made by said board of county commissioners in said boundary lines so as to include any territory outside of the boundaries described in said petition: Provided, further, That any person or persons owning land within the proposed boundaries, and who did not sign said petition, or any person, persons or corporations owning land not included within the proposed boundaries, may file a petition with the board of county commissioners asking that the proposed boundaries be extended so as to include other lands described therein; setting forth in said petition the reasons therefor: Provided, however, That no person, persons or corporations not owning lands included within the proposed boundaries, as originally petitioned for, shall have the right to file such petition unless they ask therein to have their own lands included within the proposed boundaries: Provided, further, That any corporation owning land included within the boundaries described in the original petition, may also petition the board of county commissioners for an extension of the proposed boundaries: Provided, further, That the boundaries of any drainage district heretofore or hereafter established may be extended by the board of county commissioners so as to include other lands in said county upon petition signed by the owners of a majority of the acreage of said land within the proposed extension; which said petition for extension shall set forth and contain with reference to the extension such matters and things and data so far as applicable, as is provided for in the petition required for presentation to the board of county commissioners for the purpose of the formation of the original drainage district: Provided, further, That all necessary expense incident to making such extension, together with a proportionate share of the first cost of any drainage system existing in the original district at the time of making such extensions, shall be levied against and apportioned to the lands included in such extension, as in this chapter provided. In such case the board of county commissioners shall give the like notice as provided for in this section of the hearing of the original petition, and the final hearing thereof may, in such case, be continued from time to time for a period not exceeding sixty days, and if upon final hearing the board of county commissioners deem it advisable, and to the best interest of all concerned, they may grant the prayer of such petitioner or petitioners in whole or in part. And said board of county commissioners of such county shall enter an order on the records of their office setting forth all facts found by them upon the final hearing of said petition, and which may be adduced by them from the evidence heard on the final hearing thereof: And Provided, further, That any drainage system constructed in the original drainage district may be extended into the said extension by the board of drainage commissioners of said drainage district, in the same manner, and by the same method of procedure as is provided by law for the construction of said drainage system within the said original drainage district. R.&B. §4139; L. '13, ch. 86.

155 §15. **Commissioners' Duties—Vacancies.** §8 Said board of drainage commissioners hereinbefore provided for, shall have exclusive charge of the construction and maintenance of all drainage systems which may be constructed by said district and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. In case of vacancy or vacancies occurring in said board by

the death, failure to elect, failure to qualify, resignation or removal of one or more of the members thereof from said district such vacancy or vacancies shall be filled at once from the freeholders and qualified electors of said district by the judge of the superior court of said county and said appointee shall serve the unexpired term or until the next general election: Provided, That in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment. R.&B. §4144; L. '13, ch. 86.

155 §17. **Method of Procedure.** §9. Whenever it is desired to prosecute the construction of a system of drainage by said drainage district, said district, by and through its board of commissioners, shall file a petition in the superior court of the county in which said district is located, setting forth therein the route and termini of said system, with a complete description thereof, together with specifications for its construction, with all necessary plats and plans thereof, with draughts of any artificial appliances or equipment necessary in aid thereof, together with the estimated cost of such proposed improvement, showing therein the names of the land owners whose lands are to be benefited by such proposed improvement; the number of acres owned by each land owner, and the maximum amount of benefits per acre to be derived by each land owner set forth therein from the construction of said proposed improvement, and that the same will be conducive to the public health, convenience and welfare, and increase the value of all of said property for purposes of public revenue. Said petition shall further set forth the names of the land owners through whose land the right of way is desired for said improvement; the amount of land necessary to be taken therefor, and an estimate of the value of said lands so sought to be taken for such right of way, and the damages sustained by any person or corporation interested therein, if any, by reason of such appropriation, irrespective of any benefits to be derived by such land owners by reason of the construction of said improvement. Such estimate shall be made, respectively, to each person through whose land said right of way is sought to be appropriated. Said petition shall set forth as defendants therein all the persons or corporations to be benefited by said improvement, and all persons or corporations through whose land the right of way is sought to be appropriated, and all persons or corporations having any interest therein, as mortgagee or otherwise, appearing of record, and shall set forth that said proposed system of drainage is necessary to drain all of said lands described in said petition, and that all lands sought to be appropriated for said right of way are necessary to be used as a right of way in the construction and maintenance of said improvement; and when the proposed improvement will protect or benefit the whole or any part of any public or corporate road or railroad, so that the traveled track or roadbed thereof will be improved by its construction, such fact shall be set forth in said petition, and such public or private corporations owning said road or railroad shall be made parties defendant therein, and the maximum amount of benefits to be derived from said proposed improvement shall be estimated in said petition against said road or railroad: Provided, however, That all maps, plats, field notes, surveys, plans, specifications, or other data heretofore made, ascertained or prepared under laws heretofore enacted on the subject of this chapter, may be used under the provisions of this chapter. R.&B. §4145; L. '13, ch. 86.

155 §79.

Note on preceding page of Code.

AN ACT relating to the establishment of drainage improvement districts, providing for the construction, maintenance, extension and protection of drainage systems, the method of apportioning, assessing and collecting funds and paying for the construction and maintenance thereof, repealing (155 §99) chapter LXVI of the Laws of 1901 saving in certain particulars, providing the method of bringing certain existing districts and ditches under the provisions of this act, declaring the Legislative intent as to the effect of adjudications, providing penalties for the violation thereof, and declaring that this is necessary for the immediate preservation of the public health and shall take effect immediately. Approved March 24, 1913. Laws '13, ch. 176.

155 §99. Ditches Without Organization. §1. Whenever one or more persons whose land will be benefited thereby shall desire to have a drainage system established and constructed or any part of an existing drainage system other than those organized under the provisions of (155 §1) chapter 115 of the Laws of 1895 straightened, widened, altered, deepened or otherwise improved, and shall not desire to incorporate as a drainage district under the provisions of (155 §1) chapter 115 of the Laws of 1895 and the acts amendatory and supplemental thereto, or there shall not be a sufficient number to be benefited by such system to form a drainage district as in said chapter and the acts amendatory and supplemental thereto provided, proceedings for the construction or improvement of such system shall be as provided for in this act.

155 §99.

Act repealed L. '13, ch. 176, §40.

155 §101. Definitions. §2. "Drainage system" as used in this act shall be held to include a ditch, drain or water course and any side, lateral, spur or branch ditch, drain or water course necessary to secure the object of the improvement. Two or more ditches, drains or water courses with their laterals, spurs, and branches with separate outlets may be included in one system and constructed as a part thereof when such separate systems will draw wholly or in part from the same body of soil water. But no system shall be established or constructed unless sufficient outlet or outlets are provided, which outlet or outlets may be either within or without the boundaries of the improvement district hereinafter provided for. Any natural water course may be improved in accordance with the provisions of this act.

"Damages" as used in this act shall be held to include the value of property taken and injury to property not taken, or either, as the case may be. "Property benefited" and "property damaged" as used in this act shall be held to include land, platted or unplatted, whether subject to or exempt from general taxation and roads other than public roads. "Public roads" as used in this act shall be held to include state and county roads, streets, alleys and other public places; and "other roads" as used in this act shall be held to include railroads, street railroads, interurban railroads, logging roads, tramways and private roads, and the rights of way, roadbeds and tracks thereof.

"Public utilities" as used in this act shall be held to include irrigation, power and other canals, flumes, conduits and ditches, telegraph, telephone and electric transmission and pole lines, and oil, gas and other pipe lines. "County engineer" as used in this act shall be held to include any engineer specially employed by the board of county commissioners or the board of supervisors to report upon and prepare plans for or to superintend the construction of a drainage system under the provisions of this act. "Prosecuting attorney" as used in this act shall be held to include any attorney specially employed by the board of county commissioners in connection with the carrying out of the provisions of this act to advise or carry on proceedings in court with reference to a drainage system initiated and constructed under the provisions of this act.

155 §103. Petition—Bond. §3. Application for any such improvement shall be made by petition to the board of county commissioners of the county or counties in which such system of drainage or proposed system or any part thereof may be, signed by one or more of the owners of property which will be benefited thereby. The petition shall be filed with the clerk of the board of county commissioners, and shall set forth the necessity for the improvement, and shall describe with reasonable certainty the route and termini thereof; and there shall be filed therewith a bond payable to the county, with good and sufficient surety, to be approved by the board of county commissioners, in a sum of not less than two hundred dollars, conditioned for the payment of all expenses which may have been incurred in the proceedings, in case the prayer of the petition be not granted or the petition be dismissed for any cause. If at any time it shall appear to the board of county commissioners that the bond filed with the petition is not sufficient in amount to cover the expenses which will be necessarily incurred in the proceedings, the

board may order an additional bond in such an amount as it shall direct to be given.

155 §105. **View by County Engineer.** §4. Upon the filing of the petition and the approval of the bond, the clerk of the board shall deliver a copy of said petition to the county engineer, who shall at once proceed to view the line of the proposed improvement and the property to be affected thereby and determine whether the improvement is in his opinion necessary or will be conducive to public health, convenience or welfare and whether in his opinion the line or lines described constitute the best route, what, if any, branches mentioned in the petition are in his judgment unnecessary, and what, if any, additional branches should be added thereto or changes made therein, and shall report to and file his findings in writing with the board of county commissioners.

155 §107. **Adverse Report.** §5. If the report of the county engineer shall be against the improvement, the board of county commissioners shall dismiss the petition at the cost of the petitioners, and shall cause an itemized bill of all the costs to be made up by the clerk for its examination and approval, including the per diem of the county engineer, and all other costs necessarily incurred except the fees of the clerk and the compensation of the county commissioners, and if such costs are not paid by the petitioners on demand they shall be recovered in an action on the bond.

155 §109. **Favorable Report—Plat and Estimates.** §6. If the report of the county engineer shall be in favor of said improvement, the board of county commissioners shall give the improvement district a number, being its serial number in the order of time of its formation among the improvement districts of the county formed under this act, beginning with the next number following the last serial number of any drainage district organized and existing in said county, if any and thereafter such district shall be designated as Drainage Improvement District Number.....of.....County, and the board shall cause to be entered on its journal an order directing the county engineer to go upon the lines described in the petition, or as changed by him in his report, and survey, and take levels on the same and set a stake at every hundred feet, numbering down stream, and note the intersection of property lines and boundaries, township, city and county lines, and road crossings, and make a report, profile and plat of the same; also to make an estimate of the cost of construction of such drainage system itemized so as to be reasonably specific as to the various parts thereof; Provided, That such estimate of the cost shall be held to be preliminary only and shall not be binding as a limit on the amount that may be expended in constructing such drainage system. The clerk of the board shall prepare and keep a special index in which he shall note all proceedings had and all papers filed in connection with such drainage improvement district.

155 §111. **Schedule of Damages and Benefits.** §7. The board shall also by order entered on the journal, direct the county engineer to make and return a schedule and estimate of all property that will be damaged, or both damaged and benefited by the proposed improvement, and to estimate and report the total number of acres that will be benefited by the proposed improvement and to specify the manner in which the proposed improvement is to be made and the number, kind, location and dimensions of all water-ways, ditches, outlets, flood-gates, bridges and crossings. Schedules of property to be damaged or damaged and benefited shall be arranged in parallel columns, with appropriate headings, and shall show the description of the property, and if land, give the legal subdivision, section, township and range, and number of acres; and if platted, the name of the plat and lot and block number; the name of the owner or owners or reputed owner or owners; the estimated gross damages that will be sustained by reason of the proposed improvement; the estimated gross benefits that will accrue; and the right hand column of the schedule shall be sufficiently wide for the signature of the owner, and shall bear the heading: "I, the undersigned owner of the property opposite which I have signed my name, accept and agree to the estimated amount of benefits and damages that will accrue to my property by reason of the proposed improvement."

155 §113. **Details of Cost.** §8. The plat provided for in section 6 shall be drawn upon a scale sufficiently large to show all the meanderings of the proposed improvement, and shall distinctly show the boundaries of each lot or tract of land and the location of each public or other road and sewer system to be benefited thereby, and so far as known, the name of the owner of each lot or tract of land and the authorities or corporation having in charge or owning or controlling each public or other road and sewer system affected, the distance in feet through each tract or parcel of land crossed by the proposed improvement, together with such other matters as the county engineer shall deem material, and the profile shall show the surface, and grade lines and the gradient fixed. The county engineer shall make and file with his report an itemized bill of costs incurred in the proper discharge of his duties under this act and the preceding sections, and shall report the same to the clerk of the board of county commissioners within ten days after the completion of the survey.

155 §115. **Hearing.** §9. Upon the filing of the report of the county engineer, the board of county commissioners shall immediately fix a date for a hearing on such report, and the clerk of the board shall give notice thereof by publication in three successive weekly issues of the official newspaper of the county, and also, if so directed by the board, in one other weekly newspaper to be designated by the board, published in or near the proposed improvement district and of general circulation therein. Said notice shall fix the time and place for said hearing and shall specify the territory to be included in the proposed improvement district, both by boundaries and also by sections or fractions thereof. Such notice shall also designate with reasonable certainty the route and termini of the proposed improvement, and shall state that the plat, report and schedule on file in the office of the board of county commissioners show the property to be taken or damaged, and the amount of damages proposed to be allowed therefor. The last publication of such notice shall be not less than seven or not more than fourteen days before the date of said hearing. Said hearing, and also the hearing hereinafter provided, for fixing the apportionment of the cost of said improvement, may either or both of them be held at a place other than the county seat, and more convenient to the lands affected, if the board of county commissioners shall so order. The county engineer shall attend and have at such hearing his plats, plans, reports and schedules in relation to the proposed improvement, and the clerk of the board of county commissioners shall also attend and have at such hearing all petitions, claims, objections and other papers and documents relating to said improvement on file in his office.

155 §117. **Questions to Be Heard.** §10. On the date set for said hearing the board of county commissioners shall meet at the place designated in the notice, and if it appear that due notice of such hearing has been given, shall proceed with the hearing on the report of the county engineer, and any objections thereto, and may adjourn said hearing from time to time. At said hearing, the board shall hear all pertinent evidence, including any evidence offered concerning the probable cost of the system and the probable benefits to accrue therefrom, and may change, add to or modify the plans for such drainage system and the boundaries of the improvement district, and change the estimate of damages and benefits in any case, and may review, change and modify any of the findings and estimates of the county engineer, and may, in its discretion, employ another engineer to make separate findings on any or all of the matters hereinbefore required to be included in the report of the county engineer, and may adjourn said hearing and await such report; or may discontinue proceedings in regard to the proposed improvement, at the cost of the petitioners therefor, if the board shall determine that the construction of the proposed improvement is not warranted by the benefits to be derived therefrom. In case any change in the plans of the proposed improvement is made at said hearing, and such change will cause additional damages to any property, or will damage any property not damaged under the original plans, the county engineer shall prepare and file a schedule, showing the estimated damages and benefits under such changed plans, and notice of the filing of such schedule shall be served upon the owners of the properties affected, and settlements made as hereinafter provided.

155 §119. **Acceptance by Owners.** §11. In case any owner of property to be damaged by the proposed improvement shall agree to accept the damages estimated by the engineer, or as fixed by the board of county commissioners, the board shall direct and the clerk of the board shall prepare a deed to be approved by the county engineer and the prosecuting attorney, conveying to the county for the benefit of the proposed district the property to be taken and the right to damage property not taken. If the damages agreed upon are equalled or exceeded by the agreed estimated benefits, the grantors in the deed shall execute and deliver the same without consideration other than the right to have the damages offset against the benefits in the apportionment of the cost of the improvement as hereinafter provided. If the damages agreed upon are damages to property not benefited, or if such damages exceed the agreed benefits, the grantors in the deed shall execute and deliver the same upon the receipt of a warrant drawn by the county auditor under the direction of the board of county commissioners upon the current expense fund of the county, for the amount of damages or the amount of excess of damages over benefits, as the case may be. No such deed shall be accepted, either with or without consideration, until the title conveyed thereby has been approved by the prosecuting attorney.

155 §121. **Refusal by Owners—Condemnation.** §12. If at the conclusion of the hearing provided for in section 10 it shall appear to the board of county commissioners that the owner of any property to be damaged by the proposed improvements has not accepted and agreed to the damages estimated by the engineer or fixed by the board, the board may, in its discretion, appoint an agent to secure acceptances and deeds from such owners and shall, within a reasonable time, direct the prosecuting attorney of the county to institute proceedings in the superior court of the county in which the property affected is located, for the determination of the damages to be sustained and the condemnation of any property the title to which or the right to damage which has not been acquired, and shall direct the clerk of the board to furnish the attorney with a certified copy of such proceedings of the board as he shall require.

155 §123. **Eminent Domain as for Roads.** §13. For the purpose of taking or damaging property for the purposes of this act, counties shall have and exercise the power of eminent domain in behalf of the proposed improvement district, and the mode of procedure therefor shall be as provided by law (441 §15; 171 §173) for the condemnation of lands by counties for public highways.

155 §125. **Verdict of Jury.** §14. The jury in such condemnation proceedings shall find and return a verdict for the amount of damages sustained: Provided, That the jury, in determining the amount of damages, shall take into consideration the benefits, if any, that will accrue to the property damaged by reason of the proposed improvement, and shall make special findings in the verdict of the gross amount of damages to be sustained and the gross amount of benefits that will accrue. If it shall appear by the verdict of the jury that the gross damages exceed the gross benefits, judgment shall be entered against the county, and in favor of the owner or owners of the property damaged, in the amount of the excess of damages over the benefits, and for the costs of the proceedings, and upon payment of the judgment into the registry of the court for the owner or owners, a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. If it shall appear by the verdict that the gross benefits as found by the jury equal or exceed the gross damages, judgment shall be entered against the county and in favor of the owner or owners for the costs only, and upon payment of the judgment for costs a decree of appropriation shall be entered, vesting the title to the property appropriated in the county for the benefit of the improvement district. The verdict and findings of the jury as to damages and benefits shall be binding upon the board appointed to apportion the cost of the improvement upon the property benefited as hereinafter provided.

155 §127. **Payment of Damages.** §15. Upon the settlement of the claims for damages as provided in section 11, or upon the entry of judgment as provided in section 14, the county auditor shall, under the direction of the board

of county commissioners, draw his warrant upon the county treasurer for the payment of the amount of damages agreed to or the amount of the judgment, as the case may be, to be paid out of the current expense fund of the county.

155 §129. **Improvement to Be Made.** § 16. When the board of county commissioners shall have finally determined and fixed the route and plans for the proposed drainage system and the boundaries of the improvement district, and when it shall appear that the damages for property to be taken or damaged have been settled in the manner hereinabove provided, or when it shall appear that such damages have been settled as to a particular portion of the proposed improvement, and that construction of such portion of such proposed improvement is feasible, the board of county commissioners shall proceed with the construction of the improvement or of such portion thereof, as the case may be.

155 §131. **Assessments and Payment of Cost.** §17. The cost of the improvement shall be paid by assessment upon the property benefited. The assessments shall bear interest until paid at such rate, not to exceed eight per cent. per annum, as the board of county commissioners shall determine. At the hearing provided for in section 10 of this act the board of county commissioners shall determine in what manner and within how many years said assessment shall be paid, and shall also at said meeting determine whether the evidences of indebtedness for the cost of said improvement shall be warrants or bonds. If warrants, it shall fix not to exceed five yearly instalments for the payment of said assessments, and if bonds, it shall fix either ten or fifteen years for the payment thereof. Such assessments may be graduated so that the heavier installments shall fall in the later years. In case warrants are to be issued, no yearly instalment shall be less than one-tenth nor more than three-tenths of the entire assessment; and in case bonds are to be issued for ten years, the instalments shall be as follows: For the 1st year, 5%. For the 2nd year, 5%. For the 3rd year, 5%. For the 4th year, 10%. For the 5th year, 10%. For the 6th year, 10%. For the 7th year, 10%. For the 8th year, 10%. For the 9th year, 15%. For the 10th year, 15%. And in case bonds are to be issued for fifteen years the instalments shall be as follows: For the 1st and 2nd years, interest only. For the 3rd year, 3%. For the 4th year, 4%. For the 5th year, 5%. For the 6th year, 5%. For the 7th year, 6%. For the 8th year, 7%. For each succeeding year, 10%. Such bonds shall be interest-bearing coupon bonds, and of such denominations of not less than \$100 nor more than \$500 as the county commissiners shall by resolution prescribe, and shall recite that they are secured to be paid by assessments upon the property of Drainage Improvement District No....., of..... County, and that they are not a general obligation of such county. They shall be payable in their serial order on the call of the treasurer, whenever at any coupon date there shall be sufficient money in the fund of the district against which they are issued over and above that necessary for the payment of interest on all outstanding bonds, to pay the principal of one or more bonds. The treasurer shall give notice of such call by publication in the county official newspaper, in two successive weekly issues thereof, the second of which shall be not less than seven nor more than fourteen days before the annual interest date, stating that bonds Nos..... (giving their serial number or numbers) will be paid on the date the next interest coupons on said bonds shall become due, and interest upon such bonds shall thereupon cease upon such date. Each warrant and bond shall bear the date of its issuance, and recite that it is payable on or before the.....day of....., 19....., which shall be.....months after the last instalment of the assessment shall become due, and shall be signed by a majority of the board of county commissioners and attested by the county auditor under his seal, and each coupon shall have printed thereon a fac-smile of the signatures of such officers. The county treasurer shall register said warrants and bonds in a book kept for that purpose and shall certify on each thereof under his seal that it has been so registered and that the signatures thereon are the genuine signatures of said county commissioners and the county auditor, and that the seal attached is the seal of the county auditor. Such warrants and bonds shall not be issued in any amount in excess of the cost and expense of the improvement.

155 §133. **Warrants or Bonds May Be Issued.** §18. The board of county

commissioners may, under such regulations and on such notice as they may determine, sell the warrants and bonds or any part thereof, issued under the provisions of this act, and pay the proceeds thereof into the fund to be used for the purpose of paying the cost and expenses of the improvement. Any warrants or bonds issued under the provisions of this act or such portions thereof as shall remain unsold or undisposed of may be issued to the contractor constructing the improvement or any part thereof in payment therefor, and in case the improvement or any part thereof shall be constructed by the board of supervisors as in this act provided, may be issued in payment for work, labor and material performed and furnished therefor.

155 §135. **Election.** §19. Upon the determination by the board of county commissioners to proceed with the work of construction, said board shall order an election to be held in some place within the district to be designated by the board, and shall appoint an election board to consist of one inspector and two judges, who shall qualify in like manner and receive like compensation as election officers at general elections. Notice of said election shall be given by the clerk of the board of county commissioners by publication in two consecutive weekly issues of a newspaper to be designated by the board and of general circulation in the district, the last of which publications shall be not less than seven nor more than fourteen days prior to the date of said election, and such notice shall also be posted by the sheriff of the county not less than fourteen days prior to the date of said election, in three of the most public places in the district. All electors of the county owning land in the district shall be entitled to vote at said election and at the annual elections hereinafter provided for.

155 §137. **Board to Be Elected.** §20. At the election provided for in the preceding section, two qualified electors of the county owning land in the district shall be elected, who, with the county engineer, shall constitute the first board of supervisors of said district. The board of supervisors shall have charge of the construction and maintenance of the drainage system of the district, subject to the limitations hereinafer set forth, and may employ a superintendent of construction and maintenance, who may be one of the two elected supervisors. The supervisor receiving the highest number of votes shall hold office until one year after the first annual election of the district and until his successor is elected and qualified, and the other supervisor shall hold office until his successor is elected at the first annual election and shall have qualified. The elected supervisor shall qualify by taking the usual oath of office of county and precinct officers, and by giving a bond in an amount to be fixed and with surety to be approved by the board of county commissioners. On the second Tuesday of December in the year following the election hereinabove provided for and annually thereafter, there shall be elected one supervisor of such district, who shall hold office for the term of two years and until his successor is elected and qualified. Such annual election shall be held upon the same notice and under the same regulations and in the same manner as the first election hereinbefore provided for: Provided, That any drainage improvement districts established under this act, or heretofore established under (Code 1912, 155 §99) chapter LXVI of the Laws of 1901, not including any city or town and not less than two thousand acres in extent including all additions thereto, notice of annual elections of supervisors shall be given by posting only.

155 §139. **Supervisors Under Former Law.** §21. In all drainage districts heretofore organized and now existing under the provisions of (Code 1912, 155 §99) chapter LXVI of the Laws of 1901, in which an improvement or extension of the existing drainage system is initiated under the provisions of this act during the year 1913, an election of supervisors shall be held in the manner provided for the first election in drainage improvement districts organized under the provisions of this act, and in such districts in which no improvements are initiated during the year 1913, the first election shall be held on the second Tuesday in December, 1913. The supervisors of such districts now in office shall, unless sooner removed as provided by the act of 1901, hold office until their successors elected under this act shall have qualified.

155 §141. **Construction Work.** §22. The said board of supervisors shall,

immediately upon their election and qualification, begin the construction of such drainage system at the outlet or outlets thereof, and at such other points as may be deemed advisable from time to time, and shall proceed with the construction thereof in accordance with the plans adopted therefor: Provided, That in the construction of said drainage system the board of supervisors with the approval of the board of county commissioners may change the original plans, cross sections, gradients, depth and other features of the system, and may construct lining, bulkheading or riprapping wherever the same may be found necessary or advisable in the course of actual construction; but no essential deviation from the route or alteration of the plans or mode of construction of the system shall be made that will increase the cost of the entire system by more than one-fifth, and no deviation of route requiring additional or different right of way shall be made until title thereto has been first obtained: Provided further, That the board of county commissioners may in its discretion let the construction of said drainage system or any portion thereof by contract, in the manner provided for letting contracts for other public works: And provided further, That the board of county commissioners may, upon such terms as may be agreed upon by the United States acting in pursuance of the National Reclamation Act approved June 17, 1902 (32 Statutes at Large 388), and the acts amendatory thereof and supplemental thereto, or in pursuance to any other act of congress appropriate to the purpose, contract for the construction of the drainage system or any part thereof, by the United States, or in co-operation with the United States therein. In such case, no bond shall be required, and the work shall be done under the supervision and control of the proper officers of the United States.

Unless the work of construction is let by contract, as hereinbefore provided, or for such part of such work as is not covered by contract, the board of supervisors shall employ such number of men as shall be necessary to successfully carry on the work of such construction, and shall give preference in such employment to persons owning land to be benefited by the improvement.

155 §143. **Pay of Officers—Vouchers—Interest.** §23. The compensation of the board of supervisors, superintendent of construction, the board of appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the board of county commissioners in connection with the improvement, the maximum wages to be paid, and the maximum price of materials to be used, shall be fixed by the board of county commissioners. Each county commissioner shall receive pay at the rate of four dollars per day for the number of days he is engaged in the performance of any duty under this act, which sum shall be additional to his salary in case he receive an annual salary; and none of the statutory provisions limiting the number of days that a county commissioner shall draw pay for or limiting the number of sessions for attendance upon which he shall be entitled to mileage shall apply to any proceedings under this act. All officers and members of boards performing duties under this act shall receive in addition to their fees or salaries their actual necessary expenses incurred in the performance of their duties hereunder. All costs of construction or maintenance done under the direction of the board of supervisors shall be paid upon vouchers or payrolls verified by two of the said supervisors. All costs of construction and all other expenses, fees and charges on account of such improvement shall be paid by warrants upon the county treasurer upon the proper fund, and shall draw interest at such rate not to exceed eight per cent. per annum as the board of county commissioners shall fix, until paid or called by the county treasurer as other warrants of the county are called.

155 §145. **Crossings on Public Ways, Etc.** §24. Whenever in the progress of the construction of the drainage system it shall become necessary to construct a portion of such system across any public or other road or public utility, the board of supervisors, or in case the work is being done by contract the board of county commissioners, shall serve notice in writing upon the authorities, corporation or person having charge of, or controlling or owning such road or public utility, as the case may be, of the present necessity of such crossing, giving the location, kind, dimensions and requirement

thereof, for the purpose of the drainage system, and stating a reasonable time, to be fixed by the county engineer, within which plans for such crossing must be filed for approval in case the authorities, corporation or person controlling or owning such road or public utility desire to construct such crossing. As soon as convenient, within the time fixed in the notice, the authorities, corporation or person shall, if they desire to construct such crossing, prepare and submit to the county engineer for approval duplicate detailed plans and specifications for such crossing. Upon submission of such plans, the county engineer shall examine and may modify the same to meet the requirements of the drainage system, and when such plans or modified plans are satisfactory to the county engineer he shall approve the same and return one thereof to the authorities, corporation or person submitting the same, and file the duplicate in his office, and shall notify such authorities, corporation or person of the time within which said crossing must be constructed. Upon the return of such approved plans, the authorities, corporation or person controlling such road or public utility shall, within the time fixed by the county engineer, construct such crossing in accordance with the approved plans, and shall thereafter maintain the same. In case such authorities, corporation or person controlling or owning such road or public utility shall fail to file plans for such crossing within the time prescribed in the notice, the board of supervisors or of county commissioners, as the case may be, shall proceed with the construction of such crossing in such manner as will cause no unnecessary injury to or interference with such road or public utility. The cost of construction and maintenance of only such crossings or such portion of such cost as would not have been necessary but for the construction of the drainage system shall be a proper charge against the improvement district, and only so much of such cost as the board of county commissioners shall deem reasonable shall be allowed as a charge against the district in the case of crossings constructed by others than the authorities of the district. The amount of costs of construction by private corporations and persons allowed as a charge against the district by the board of county commissioners shall be credited on the assessments against the property on which the crossing is constructed, and any excess over such assessments shall be paid out of the funds of the district. The cost of construction and maintenance of crossings of public roads shall be paid by the county, city or town maintaining such public road.

155 §147. **Final Statement of Cost—Procedure.** §25. When the improvement is fully completed and accepted by the county engineer, the clerk of the board shall compile and file with the board of county commissioners an itemized statement of the total cost of the improvement, including engineering and election expenses, the cost of publishing and posting notices, damages and costs allowed or awarded for property taken or damaged, including compensation of attorneys, the cost of construction, including the cost of crossings constructed by the district and the cost of crossings constructed by others and allowed by the board of county commissioners, and including the sums paid or to be paid to the United States, and including all other costs and expenses, including fees, per diem and necessary expenses of non-salaried officers incurred in connection with the improvement, together with interest on such costs and expenses from the time when incurred at the rate of eight per cent. per annum. There shall also be included in said statement, in case the county engineer is a salaried officer, a statement of the services performed by him in connection with said improvement at a per diem of five dollars per day and his necessary expenses, and a reasonable sum to be fixed by the board of county commissioners on account of the services rendered by the prosecuting attorney. Upon the filing of such statement of costs and expenses the board of county commissioners shall revise and correct the same if necessary and add thereto a reasonable sum, not to exceed ten per cent. of the total thereof, to cover possible errors in the statement or the apportionment hereinafter provided for, and the cost of such apportionment and other subsequent expenses, and shall appoint a board of appraisers consisting of the county engineer ex-officio, and two other competent persons, to apportion the grand total as con-

tained in said statement as hereinafter provided. Each member of said board of appraisers shall take, subscribe and file with the board of county commissioners an oath to faithfully and impartially perform his duties to the best of his ability in making said apportionment, and said board of appraisers shall proceed to carefully examine the drainage system and the public and private property within the district and fairly, justly and equitably apportion the grand total cost of the improvement against the property and the county or counties, cities and towns within the district, in proportion to the benefits accruing thereto. The members of said board of appraisers shall be paid out of the funds of the district such compensation for their services as the board of county commissioners shall fix.

155 §149. **Benefits to Road, Etc.** §26. Whenever any drainage system constructed under the provisions of this act will drain the whole or any part of any public road or will so affect such road that the same or the road-bed or track thereof will be benefited or protected thereby, or where any such drainage system will furnish an outlet for or facilitate the construction or maintenance of any sewer system in any city or town, there shall be apportioned against the county in which any such state or county road outside of any incorporated city or town is located or against the city or town in which any such public road is located, or against any such other road or part thereof so drained or affected, or against the city or town for which an outlet for sewage will be furnished or wherein the construction or maintenance of a sewer system will be facilitated, the proper amount of the total sum to be apportioned, and nothing in this section contained shall be so construed as to prevent the apportionment of the proper amount of the total sum to any property other than roads lying within any such county, city or town, in proportion to the benefits accruing thereto.

155 §151. **Benefits to Irrigated Lands.** §27. In the plans for and in the construction of a drainage system in an irrigated region, under the provisions of this act, provision may be made for the prevention of, or affording an outlet for drains to prevent, injury to land from seepage of or saturation by irrigation water, and for the carrying off of necessary waste water from irrigation, and benefits resulting from such provision shall be considered in making the apportionment of the cost of such system.

155 §153. **Benefits to Public Lands.** §28. There shall be apportioned against all state school, granted, and other lands, in the district the proper amount of the total sum to be apportioned in proportion to the benefits accruing thereto.

155 §155. **Statement of Benefits to Be Filed.** §29. Upon the completion of the apportionment the board of appraisers shall prepare upon suitable blanks, to be prescribed by the bureau of inspection and supervision of public offices, sign and file with the clerk of the board of county commissioners a schedule giving the name of each county, city and town and the description of each piece of property found to be benefited by the improvement in the following order: First, counties, cities and towns and the respective amounts apportioned thereto for benefits accruing to public roads and sewer systems therein; second, other roads (a) railroads, (b) street railroads, (c) interurban railroads, (d) logging roads, and (e) tramways, giving the location of the particular portion or portions of each road benefited and the respective amounts apportioned thereto; third, unplatted lands giving a description of each tract arranged in the numerical order of the townships, ranges and sections, and giving the legal subdivisions and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each tract; fourth, platted lands arranged by cities and towns and platted acreage in alphabetical order, giving under each the names of the plats in alphabetical order and the numbers of blocks and lots, and such other subdivisions and metes and bounds descriptions as may be necessary to show a different rate of apportionment, or different ownership, and giving the respective amounts apportioned to each plat, block, lot, or other description, as the case may be.

155 §157. **Hearing on Benefits—Assessments.** §30. Upon the filing of the schedule of apportionment the board of county commissioners shall fix the

time and place for a hearing thereon, which time shall be not less than thirty nor more than forty days from the date of filing, and notice of such hearing shall be given in the manner provided for giving notice of hearing in section 9, which notice shall fix the time and place of said hearing and shall state that the schedule of the board of appraisers showing the amount of the cost of the improvement apportioned to each county, city, town and piece of property benefited by the improvement is on file in the office of the board of county commissioners and open to public inspection. At or prior to such hearing any person interested may file with the clerk of the board written objections to any item or items of said apportionment. At such hearing, which may be adjourned from time to time until finally completed, the board of county commissioners shall carefully examine and consider said schedule of apportionments and any objections filed or made thereto, and may add thereto any property benefited by the improvement against which no apportionment has been made, or strike therefrom any property not benefited, and change, modify or re-apportion any item thereof, and shall cause the clerk of the board to enter thereon all such additions, cancellations, changes, modifications and re-apportionments, all credits for damages allowed or awarded to the owner of any piece of property benefited, but not paid, as provided in section 14 of this act; also, a credit in favor of the county on any apportionment against the county, of all sums paid on account of said improvement, as provided in section 15 of this act; and all sums allowed the county on account of services rendered by the county engineer or prosecuting attorney, as provided in section 25 of this act; and all credits allowed to property owners constructing crossings as provided in section 24 of this act. When the board of county commissioners shall have finally determined that the apportionment as filed or as changed and modified by the board is a fair, just and equitable apportionment, and that the proper credits have been entered thereon, the members of the board approving the same shall sign the schedule and cause the clerk of the board to attest their signatures under his seal, and shall enter an order on the journal approving the final apportionment and all proceedings leading thereto and in connection therewith. Thereupon, the county auditor shall prepare an assessment roll which shall contain, first, a map of the district showing each separate description of property assessed; second, an index of the schedule of apportionments; third, an index of the record of the proceedings had in connection with the improvement; fourth, a copy of the resolution of the board of county commissioners fixing the method of payment of assessments; fifth, the warrant of the auditor authorizing the county treasurer to collect assessments; and sixth, the approved schedule of apportionments of assessments; and shall charge the county treasurer with the total amount of the assessment and turn the roll over to the treasurer, for collection in accordance with the resolution of the board of county commissioners fixing the method of payment of assessments. The assessments contained in said assessment roll shall be liens upon the property assessed, and all such liens shall relate back to and take effect as of the date when the board of county commissioners determined to proceed with the construction of the improvement as provided in section 16 of this act.

155 §158. **Maintenance Fund.** §31. There shall be established in the county treasury of any county in which any drainage improvement district is organized under the provisions of this act, a separate fund for the construction and a separate fund for the maintenance of the improvement in such district. All moneys collected on assessments for the construction or maintenance of any such improvement shall be paid into the proper fund and shall be applied first to the payment of any interest due, and second to the payment of any outstanding warrants or bonds in the order of their issuance. The respective instalments of assessments for construction or maintenance of drainage improvements made under the provisions of this act, shall be collected in the same manner and shall become delinquent at the same time as general taxes, and shall bear interest after delinquency at the rate of ten per cent. per annum, and the lien thereof shall be enforced by foreclosure and sale of the property assessed, as in the case of general taxes. If any item of assessment shall be uncollectable by reason of any

irregularity in any of the proceedings, a new hearing, as provided in section 30 of this act, and a reassessment of the property mentioned in such item, in proportion to the benefit received thereby, shall be had and made. If any item of assessment shall be uncollectable by reason of the fact that the property assessed does not sell for enough to pay the assessment against it, or by reason of the fact the property assessed was not subject to assessment, the board of county commissioners shall cause a supplemental assessment to be made on the property benefited by the improvement and against the county, cities and towns chargeable therewith in the manner provided for the original assessment, to cover the deficiency.

155 §159. **Annual Maintenance Fund.** §32. On or before the first day of October in each year the board of supervisors of each drainage improvement district shall make and file with the board of county commissioners of the county containing such district, a statement and estimate in writing of the amount required for maintenance of the drainage system of said district for the ensuing fiscal year, and the board of county commissioners shall, on or before the first day of November next ensuing, levy an assessment for the amount of said estimate, or such amount as it shall deem advisable, upon the property within the district and against the county, cities and towns chargeable therewith in the same proportion as the assessment to pay the original cost of construction of said drainage system was levied: Provided, however, That, upon petition filed by two or more assessed property owners of a district the county commissioners may, in their discretion, hold a hearing at the county seat for the purpose of reapportioning the maintenance charges in such district, to be held at the time of the equalization of the real property assessment in the even numbered calendar years. Preliminary to such hearing the county commissioners shall appoint a board of three appraisers, of whom the county engineer shall be one, who shall qualify and proceed as the board of appraisers appointed to apportion the original cost of the system, and shall report to and file with the board of county commissioners their recommendations in such matter not less than twenty days prior to the date of such hearing. Notice of the filing of such report and that such hearing will be held shall be given by publication in the official county newspaper and in such other newspaper published in or near such district as the county commissioners may in their discretion direct in two successive publications, the last of which shall not be less than seven or more than fourteen days prior to the date of said hearing. And at such hearing the commissioners may make such change in the basis of the apportionment of the levies for the maintenance of such drainage system as may seem just and equitable. In maintaining the drainage system of their district the board of supervisors may, with the approval of the board of county commissioners, make expenditures in excess of the annual maintenance fund herein provided for, which excess amount shall in such event be included in the maintenance levy for the succeeding year: Provided, That when, owing to floods or other causes an unusually high maintenance levy or expenditure in excess of the current levy shall be necessary the board of county commissioners may provide that such levy or the levy to meet such excess expenditure be spread over a term of years and warrants or bonds issued to meet the same as herein provided for the original construction cost of a drainage system.

155 §160. **Payment by Municipality.** §33. The amount of the costs of construction or maintenance of any drainage system assessed against any city, town or county may be met by levies to be paid in similar instalments and extending over a like period of time as the assessments against property benefited are spread, or such amounts may be met by the issue and sale of the bonds of such city, town or county in the manner in which bonds to meet general indebtedness of such city, town or county are issued. The proper authorities of such city, town or county shall make the necessary levies to meet such amounts thus apportioned thereto as a general levy on all property therein.

155 §161. **Striking or Adding Lands.** §34. Upon a petition and bond being filed by one or more land owners, either within or without the boundaries of a drainage improvement district, and like proceedings being had as in

the case of the original establishment and construction of a drainage system, the county commissioners may declare any drainage system or any part thereof, abandoned and may strike from the district lands no longer benefited or served thereby, or they may cause the route of any established drainage system to be changed, in whole or in part, or the whole or any part thereof to be widened or deepened, or provided with lining or bulkheading, or other betterment to be made therein, or a new outlet or outlets, or one or more branches or extensions to be constructed, either within or without the boundaries of the original district. But the striking of any lands from a district shall not in any way affect any assessment theretofore levied against such lands. When such improvements shall have been completed the costs thereof shall be apportioned and assessed against the lands benefited thereby in the manner hereinbefore provided for such apportionment and assessment in the case of original proceedings in regard to a drainage system and drainage improvement district. New lands assessed for any such improvement shall become a part of such drainage improvement district. The construction and maintenance of such new improvement, unless let by contract by the board of county commissioners, shall be under the direction of the board of supervisors of the district in which they are made or to which said improvement is added.

155 §162. **Cost to Added Lands.** §35. When any extension or new branch of any existing drainage system is thus constructed there may be included in the apportionment and assessment of the costs thereof against the property, county, cities and towns benefited thereby, a proper and equitable share of the value of the existing drainage system which serves as an outlet for such extension or new branch. In arriving at which amount the board which makes the apportionments in such case shall consider the amount, if any, which the property thus to be assessed has already paid toward the construction of such drainage system, the present value of said drainage system, to-wit: the cost of duplicating the same and all other matters that may be pertinent. The amount of the value of the existing drainage system thus apportioned to the property assessed for such new construction shall be rebated pro rata upon the assessments, if any, outstanding against the lands of the district on account of the construction of such drainage system: Provided, That if the original assessment for the cost of construction is already paid, or for such proportion thereof as is already paid, to-wit, in the case of lands whereon all the instalments for costs have been paid before coming due, then and in that event the amount of the value of such existing drainage system thus reapportioned to the property benefited by such new construction or such proper proportion thereof, shall be paid into the maintenance fund of said district; and such amount shall be a credit in favor of the respective property or all of the property, as the case may be, in such original district.

155 §163. **Prosecuting Attorney's Duties.** §36. It shall be the duty of the prosecuting attorney of each county to prepare suitable blanks for the use of the board of county commissioners under this act, not otherwise provided for, and to advise the board of county commissioners and other officers of the county and the boards provided for by this act in regard to the proceedings and in the performance of their duties under this act, and perform such other duties as in this act provided and required.

155 §164. **Connecting With System—Obstructions.** §37. The board of supervisors of each drainage improvement district shall make reasonable rules and regulations whereby any owner of land in the district may make connection for drainage purposes, with the drainage system thereof. They shall also keep the drainage systems in their districts clear and free of all obstructions, and upon complaint of any person they shall immediately remove any obstruction which interferes with the flow of the water through said system.

155 §165. **Counties May Join.** §38. When a drainage system is proposed which will require a location in more than one county application therefor shall be made to the board of county commissioners in each of said counties, and the county engineers shall make preliminary reports for their respective

counties. The line of such drainage system shall be examined by the county engineers of the counties wherein said ditch will lie, jointly. The hearings provided for by sections 9 and 30 of this act shall be had by the boards of the counties wherein such drainage system shall lie, in joint session, at such place as the said boards jointly shall order. The county engineer of the county wherein the greatest length of the drainage system will lie shall have charge of the engineering work and be ex-officio a member of the boards in this act provided for: Provided, That in case a contract is let to private parties for the construction work, or in the event that the construction work necessary is proposed to be done by or with the co-operation of the United States, as in section 22 of this act provided, a contract for such purpose for the portions in the respective counties shall be executed by the boards of county commissioners of each of the counties, wherein the drainage system will extend, respectively.

155 §166. **Former Law Repealed—Proceedings Saved.** §39. Chapter LXVI of the Laws of 1901 is hereby repealed (Code 1912, 155 §99), saving and excepting, however, that the provisions of said act shall continue in force and effect and shall be applicable to and shall govern all proceedings, rights and powers, in the case of ditches already contracted for, or under construction under said act, and in the case of the maintenance of the same for the current year 1913; and the method of supervision, construction, payment for the work, apportionment of costs, and assessment and collection thereof, delinquency and foreclosing thereof and penalties therefor, and all other proceedings in regard to the same, shall be as in (Code 1912, 155 §99) said chapter LXVI of Laws of 1901 prescribed: Provided, however, That with the consent of the holders of warrants heretofore issued or hereafter issued for work already begun or contracted for under said act, or with the consent of the contractor engaged in constructing any ditch or drainage system under said act, the provisions of this act in regard to the funding of such warrants with bonds, or the payment for work with bonds and the issuance and sale thereof, and all provisions in regard to such issuing of bonds, shall be applicable to such outstanding warrants or work already begun or contracts let for work. And in such event and to the extent of the costs so acquiesced in by warrant holders or contractors, all the provisions of this act in regard to the method of payment, form, issuing and sale, of bonds and warrants, extension of the assessment over a term of years, collecting, delinquency, interest and foreclosure of the assessments, and all other proceedings in regard thereto shall be as in this act provided. In such event the county commissioners shall prescribe the method and time of payment of the assessments and whether bonds shall be issued and perform any other proper act in regard to the same, at a special meeting called for that purpose, or at the hearing on the apportionment of costs provided for in section 30 hereof.

Provided, also, That in case any of the provisions of this act shall be applied to any proceedings in regard to any ditch begun under (Code 1912, 155 §99) said chapter LXVI of the Laws of 1901 and the same shall be held not to be legally applicable thereto by a court of competent jurisdiction, then appropriate and proper proceedings for the performance of said acts or duties shall be had and done in regard thereto, as in (Code 1912, 155 §99) said chapter LXVI of the Laws of 1901 provided. And from the time any such drainage district organized and existing under the provisions of (Code 1912, 155 §99) said chapter LXVI of the Laws of 1901, shall be brought under the provisions of this act, said district shall be known and designated in all proceedings and records relating thereto, as Drainage Improvement District No.....of.....County, retaining its original serial number.

Nothing in this act contained shall be construed as in anywise modifying or repealing any of the provisions of (155 §1) chapter CXV of the Laws of 1895, or the acts amendatory thereof or supplemental thereto, or affecting any proceeding heretofore or that may hereafter be had under the provisions of said act.

155 §167. **Application of Laws.** §40. Except as specified in the foregoing section, all of the provisions of this act, instead of (Code 1912, 155 §99) said

chapter LXVI of the Laws of 1901, shall be applicable to and shall govern and be the law in all respects, in regard to all ditches and drainage systems now existing, initiated or applied for under (Code 1912, 155 §99) said chapter LXVI of the Laws of 1901, and all powers hereby vested in or granted to all boards and officers under this act shall be vested in such boards and officers that shall hereafter have charge of the work, or administering of the affairs of such ditches and drainage systems, and the districts in which they lie.

155 §168. **Act Saved Against Courts.** §41. An adjudication that any section, paragraph, or portion of this act, or any provision thereof, or proceeding provided for therein, is unconstitutional or invalid shall not affect or determine the constitutionality, or validity, of this act as a whole or of any other portion or provisions thereof, and all provisions of this act not adjudicated to be unconstitutional shall be and remain in full force and effect and shall be operative until specifically adjudicated to be unconstitutional or invalid.

AN ACT providing for the annexation of territory to drainage districts organized under the provisions of (155 §§1-79) sections 4137 to 4181 inclusive of Remington and Ballinger's Annotated Codes and Statutes of Washington. Approved March 7, 1913. Laws '13, ch. 42.

155 §229. **Annexation of Lands to District.** §1. Any land which is in need of drainage, adjoining any drainage district organized under the provisions of (155 §§1-79) sections 4137 to 4181 of Remington & Ballinger's Annotated Codes and Statutes of Washington, may be annexed to and included in such drainage district under the provisions of this act.

155 §231. **Petition—Election.** §2. Upon the presentation to the board of commissioners of such drainage district, of a petition signed by the owners of a majority of the acreage or area, of lands described in the said petition, and also a petition signed by at least ten freeholders of the said district, which petitions shall ask for the annexation to the said district of the lands described therein, and that the same may be made part of said district, it shall be the duty of the said board of commissioners to call an election in the said district, and also in the said territory which it is proposed to annex thereto, for the purpose of submitting to the electors thereof the question of such annexation; notice of which election shall be given by the said board of commissioners, in both said district, and in the said territory to be annexed, the same as the notice required in the regular annual election of officers in said district.

155 §233. **Election Board.** §3. The said board of commissioners shall appoint an election board of three electors for the election to be held in the said district and another election board of three electors in the said territory to be annexed, for the election to be held therein.

155 §235. **Election Returns—Annexation.** §4. Return of such election shall be by the officers thereof made to the board of commissioners of said district forthwith, and such board shall as soon as practicable make canvass of the said returns, and if a majority of the votes cast at each of the said elections shall be in favor of the annexation of said territory, the said board of commissioners shall forthwith certify to the county auditor and also to the county assessor of the county wherein such district and such territory are located, the fact of such election, the result thereof and a particular description of the territory annexed by such election, which certificate shall be filed and become a part of the records of the said auditor and the said assessor; and thereafter the said territory shall be taken to be and shall be annexed to, and be a part of the said district, and shall be liable to assessment for extensions and improvement of drains, and for the cost and expense of maintenance and repairs the same as other property in the said district, and for the purposes of such assessment, the maximum benefits derived to such annexed territory shall be conclusively presumed to be equal to but not greater than those of abutting property within the district as the same existed, before the said annexation.

TITLE 159—DIVORCE.

159 §1.

Does not authorize a divorce merely because the parties will never live together or adjust their differences, especially when one of them offers so to do, *Pierce v. Pierce*, 68 W. 415.

Cruelty by husband in placing wife in charity hospital at childbirth, *Gould v. Gould*, 63 W. 484.

Wife entitled to divorce where, without fault on her part, nonsupport has continued long enough to show intention to refuse to support, three months being sufficient. *Garland v. Garland*, 66 W. 226.

159 §3.

Plaintiff may have a marriage annulled on the ground of her own incapacity, *Sortore v. Sortore*, 70 W. 410.

159 §5.

Cross-complaint need not show year's residence—particulars of adultery, *Powell v. Powell*, 66 W. 561.

159 §13.

Alimony and suit money refused by supreme court when both had property and no community property, *Gust v. Gust*, 69 W. 220; reversed, *Griffith v. Griffith*, 71 W.

159 §15.

Remarriage of wife and husband's sup-

port of child no defense to alimony, *McGill v. McGill*, 67 W. 303.

Original decree of \$15 per month was modified on remarriage of wife. Later wife sought without success to obtain support for child, *White v. McDowell*, 74 W.

Property not divided is held in common, *Hicks v. Hicks*, 69 W. 627.

Includes property outside county, *Catton v. Catton*, 69 W. 130.

The power to partition property is auxiliary to the power to grant the divorce, *Wilkinson v. Wilkinson*, 63 W. 126.

159 §23.

Court may order stenographic notes to be produced, *State ex Griffith v. Court*, 71 W.

Fact that wife appeals does not preclude alimony in Supreme court, *Griffith v. Griffith*, 71 W.; reversed *id.* 71 W.

Superior court loses all jurisdiction when appealed from without stay, *State ex Gibson v. Court*, 69 W. 280.

Supreme court, on appeal by the husband from orders relating to alimony, may grant suit money and attorney's fees before final decree in the court below, *Gallagher v. Gallagher*, 65 W. 310; reversed, *Griffith v. Griffith*, 71 W.

TITLE 163—DOMESTIC ANIMALS.

163 §91

Repealed 9 §117 Supp.

163 §177.

Repealed 9 §117 Supp.

163 §221.

Repealed 9 §117 Supp.

TITLE 167—ELECTIONS.

167 §13.

Election to fill the vacancy on county bench is a special election, though held on the same day as the general election, *State ex rel. Sampson v. Court*, 71 W.

A special election, though held at the same time of a general election, is invalid, where no notice whatever was given and the only candidate concealed his candidacy from all but a few personal friends, *State ex rel. Sampson v. Court*, 71 W.

167 §109.

Irregularities do not invalidate—recount—proficiency in English, *Hill v. Howell*, 70 W. 603.

There should be some evidence of specific instances whereby illegal votes were cast or counted, a general charge insufficient, *State ex Quigley v. Court*, 74 W.

167 §110.

Irregularities without showing of harm insufficient, *Hill v. Howell*, 70 W. 603.

167 §131.

In force and certiorari will not lie, *State ex Quigley v. Court*, 71 W.

167 §179.

Failure of notice does not invalidate elec-

tion, *Paine v. Port of Seattle*, 70 W. 294; affirmed 71 W.

167 §183.

Crime of false registration predicated only on 167 §199, *State v. Ross*, 66 W. 138; *State v. Cohen*, 67 W. 618.

167 §185.

Jail breaking not "infamous" unless held on infamous charge, *State v. Collins*, 69 W. 268.

A voter is not guilty of false registration in incorrectly stating his place of residence, when he did not register in the wrong precinct, *State v. Ross*, 66 W. 138; *State v. Cohen*, 67 W. 618.

167 §199.

Incorrect residence is not false registration, *State v. Ross*, 66 W. 138; *State v. Cohen*, 67 W. 618.

167 §213.

Convention in another county invalid, *State ex Peters v. Court*, 70 W. 662.

167 §229.

Nominee of two parties may retain both and elect as to ticket, *State ex Peters v. Court*, 70 W. 662.

167 §235. **Submission of Question to Vote.** §14. Whenever a proposed constitution or constitutional amendment, or other question is to be submitted to the people of the state for popular vote, the secretary of state shall duly, and not less than thirty days before election, certify the same to the clerk of the board of county commissioners of each county in the state, and the clerk of the board of county commissioners of each county shall include the same in the publication provided for in section ten of this act. Questions to be submitted to the people of a county or municipality shall be advertised as provided for nominees for offices by said section, and in submitting said amendment or question, there shall be printed on the ballot a concise statement, not exceeding seventy-five words, of its essential features in such manner that the voters may clearly identify the proposition in which they are voting. Such statement shall be prepared by the attorney general for the secretary of state, by the prosecuting attorney for the board of county commissioners, and by the legal department of the municipality for the proper officer thereof: Provided, That where the legislature shall have prescribed any particular form, the same shall be used. R&B §4890; L. '13, ch. 135.

167 §281.

City clerk has no authority to collect a fee from a candidate for municipal office, State ex rel. Holtzner v. Bothwell, 69 W.

217.

167 §323.

That a candidate for representative was selected by a convention of his party does not disqualify him as a candidate at the primary, State ex rel. Wells v. Dykeman, 70 W. 599.

167 §327.

County auditor cannot compel a recount

of votes in a primary judiciary election in order to determine who are majority candidates, State ex rel. Case v. Court, 70 W. 428.

167 §331.

A voluntary assemblage of citizens in another county held not to constitute a nominating "convention," State ex rel. Peters v. Court, 70 W. 662.

167 §345.

Does not adopt general criminal statutes, State v. Robinson, 69 W. 172.

AN ACT to provide for the use, at the option of indicated local authorities, of voting machines at any primary, general, special or other election within the State of Washington; creating a state board of voting machine examiners and defining its powers and duties; providing rules and regulations for the conduct of elections held with voting machines; providing for the casting, registering, recording and counting of ballots or votes by voting machines, where used; and providing penalties for violation of the provisions of this act. Approved March 11, 1913. Laws '13, ch. 58.

167 §471. **Voting Machines at Elections.** §1. At all state, county, city, town, township and district elections of any character, primary, general, special or otherwise, hereafter held in the State of Washington, ballots or votes may be cast, registered, recorded and counted by means of voting machines, as hereinafter provided.

167 §473. **Voting Machine Examiners.** §2. The governor, the secretary of state, and the state treasurer and their successors in office are hereby created and constituted the state board of voting machine examiners. It shall be the duty of said board to examine all makes of voting machines submitted to it and determine whether such machines comply with the requirements of this act, and can safely be used by voters at elections under the provisions of this act. Any person or corporation owning or being interested in a voting machine may submit same to said board for examination, and said board shall thereupon publicly examine and report upon such machine, pursuant to the provisions of this act. For the purpose of assistance in examining such machine the said board may employ not more than three expert machinists at a cost of not more than ten dollars for each day employed. The compensation of said machinists shall be paid by the person or corporation submitting the machine. Within thirty days after completing the examination of any voting machine the board shall make and file with the secretary of state its report on such machine together with such written or printed description and such drawings and photographs as shall clearly identify such

machine and the mechanical operation thereof; and within ten days after receiving such report, the secretary of state shall send a copy thereof to the county commissioners of each county, to the common council of each city, and to the board or governing body of each district or other municipality within the state. Any voting machine that shall receive the approval of a majority of said board may be used for conducting any or all elections subject to the provisions of this act. Any machine that shall not receive said approval shall not be adopted for or used at any election. After a voting machine has been approved by said board, any change, or improvement therein that does not impair its accuracy, efficiency, or capacity, shall not render necessary a re-examination or re-approval thereof.

167 §475. **Definitions.** §3. The list of offices and candidates, and the statements of questions used on the voting machines shall be deemed an official ballot and the words "ballot labels," as used in this act shall mean the cards, paper, or other material containing the names of officers and candidates, and statements of questions to be voted on. The word "diagram" shall mean an illustration of the official ballot when placed upon the machine, showing the names of the parties, offices and candidates, and statements of the questions in their proper places, together with the voting devices therefor, and shall be considered a sample ballot. The word "question" shall mean a statement of such constitutional amendment or other proposition as shall be submitted to a popular vote at any election. The words "irregular ballot" shall mean the paper or other material on which a vote is cast for persons whose names do not appear on the ballot labels. The words "vote indicators" shall mean those devices with which votes are indicated for parties, candidates, or for or against questions. The words "candidate counters" and "question counters" shall mean the counters on which are registered the votes cast for candidates and on questions respectively. The words "public counter" shall mean a counter or other device, which shall at all times publicly indicate how many times the machine has been voted on at an election. The words "protective counter" or "protective devices" shall mean a counter or device that will register each time the machine is operated, and shall be so constructed, and so connected that it cannot be reset, altered or operated, except by operating the machine. The words "voting machine booth" shall mean the enclosure occupied by the voter when voting. The word "model" shall mean a mechanically-operated model of a portion of the face of the machine illustrating the manner of voting. The word "custodian" shall mean the person charged with the duty of testing and preparing the voting machine for the election. The words "statement of canvass" shall mean a statement and return in book form of the votes cast at any election, together with suitable certificates of its correctness.

167 §477. **Requirements of Machines.** §4. No voting machine shall be approved by the state board of voting machine examiners unless it be so constructed as to fulfill the following requirements: It shall secure to the voter secrecy in the act of voting. It shall provide facilities for voting for the candidates of as many political parties or organizations as may make nominations, and for or against as many questions as may be submitted. The voting devices for the candidates shall be arranged in separate parallel party lines, one or more lines for each party and in parallel office rows transverse thereto. It shall permit the voter to vote for any person for any office that he shall have the right to vote for but none other. It shall, except at primary elections, permit the voter to vote for all the candidates of one party or in part for the candidates of one party and in part for the candidates of one or more other parties. It shall, except at primary elections, provide means whereby the voter can by a single operation vote for all the candidates of one party. It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for but no more. It shall prevent the voter from voting for the same person more than once for the same office. It shall permit the voter to vote for or against any question he may have the right to vote on but none other. It shall correctly register or record all votes cast for any and all persons and for or against any and all questions. It shall be provided with a lock or locks by which all operation of the registering mechanism can be

prevented as soon as the polls of the election are closed. It shall be provided with a "protective counter," or "protective device" whereby any operating or tampering with the machine before or after the election will be detected. It shall be provided with a counter which shall show at all times during an election how many persons have voted. It shall be provided with a mechanical model, illustrating the manner of voting on the machine suitable for the instruction of voters. It may also be provided with one device for each party, for voting for all the presidential electors of that party by one operation, and a ballot label therefor containing only the words "presidential electors" preceded by the name of that party and followed by the names of the candidates thereof for the offices of president and vice-president, and a registering device therefor which shall register the vote cast for said electors when thus voted for collectively: Provided, however, That means shall be furnished whereby the voter can cast a vote in part for the candidates for presidential electors of one party and in part for those of one or more other parties or in part or in whole for persons not nominated by any party.

167 §479. **Machines May Be Adopted and Used.** §5. The county commissioners of any county, the common council of any city or town, the township board of any township or the board or governing body of any district or municipality, at any regular meeting or at a special meeting called for the purpose, may adopt, purchase, or otherwise procure, and provide for the use of, any voting machine approved by the state board of voting machine examiners; and thereafter said machine shall be used for voting at all primaries and elections for public offices and on all questions and for receiving, registering and counting the votes thereof in such election district or districts as such county commissioners, council or board shall direct. The county commissioners or council may, not later than forty days before any election, create, unite, combine, or divide one or more election districts or precincts for the purpose of using one or more voting machines therein at such election, and such uniting, combining or dividing shall be done in the manner now prescribed by law for the change of election districts. More than one voting machine may be used in the same election district. The number of voters to be in each of said districts or precincts shall be determined by said commissioners, council or board, but shall not exceed six hundred for each machine.

167 §481. **Payment for Machines.** §6. The county commissioners of any county, the council of any city, the supervisors of any town or township, or the governing board of any district or municipality may, on the adoption and purchase of a voting machine or machines, provide for the payment thereof in such a manner as they may deem for the best interest of the county, city, town or township, district or municipality, and may for that purpose issue bonds, warrants, certificates of indebtedness, notes or other negotiable obligations, which shall be a charge upon such county, city, town, township, district, or municipality, or may pay for the same in cash out of the general fund or otherwise; and may make such contract for the purchase of such machines with regard to price, manner of purchase and time of payment as to the said officials shall seem proper, and in estimating the amount of taxes for the general fund, if any, such amount shall be added, extending over such time as may be required to fully pay for such machines. Such bonds, certificates, warrants, notes or other obligations may be issued to bear interest not to exceed 5% per annum. They may be made payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par.

167 §483. **Printed Matter and Supplies.** §7. Within a proper and reasonable time before each election at which voting machines are to be used, the secretary of state shall prepare samples of the printed matter and supplies named in this section, and shall furnish one of each thereof to the board or official in charge of the election of each county, city, township or district in which the machines are to be used; such samples to meet the requirements of the election to be held and to suit the construction of the machine to be used. The board or officials charged with the duty of providing ballots shall provide for each voting machine for each election the fol-

lowing printed matter and supplies: Suitable printed or written directions to the custodian for testing and preparing the voting machines for the election; one certificate on which the custodian can certify that he has properly tested and prepared the voting machine for the election; one certificate on which some person other than the custodian can certify that the voting machine has been examined and found to have been properly prepared for the election; one certificate on which the party representatives can certify that they have witnessed the testing and preparation of the machines; one certificate on which the deliverer of the machines can certify that he has delivered the machines to the polling places in good order; one card stating the penalty for tampering with or injuring a voting machine; two seals for sealing a voting machine; one envelope in which the keys to the voting machine can be sealed and delivered to the election officers, said envelope to have printed or written thereon the designation and location of the election district in which the machine is to be used, the number of the machine, the number shown on the protective counter thereof after the machine has been prepared for the election and the number or other designation on such seal as the machine is sealed with; said envelope to have attached to it a detachable receipt for the delivery of the keys of the voting machine to the inspector of election; one envelope in which the keys to the voting machine can be returned by the inspector of election; one card stating the name and telephone address of the custodian on the day of election; two statements of canvass on which the election officers can report the canvass of the votes as shown on the voting machine together with other necessary information relating to the election, said statements of canvass to take the place of all tally-keepers, statements and returns as provided heretofore; three complete sets of ballot labels; two diagrams; five suitable printed instructions to the inspector of election; three notices to inspectors and judges of election to attend the instruction meetings; three certificates that the inspector and judges of an election have attended the instruction meeting, have received the necessary instruction, and are qualified to conduct the election with the machine.

The ballot labels shall be printed in black ink on clear white material of such size and arrangement as to suit the construction of the machine: Provided, however, The ballot labels for questions may contain a condensed statement of each question to be voted on, accompanied by the words "Yes" and "No"; the titles of the offices on the ballot labels shall be printed in type as large as the space for such office will reasonably permit, and where more than one candidate can be voted for an office, there shall be printed below the office title the words "vote for any two", or such number as the voter is lawfully entitled to vote for out of the whole number of candidates nominated.

If the election be one at which all the candidates for the office of presidential electors are to be voted for with one device, the county commissioners shall furnish for each machine at least five lists of the names of the presidential electors nominated and at least fifty paper ballots with which the voter can vote thereon for part of the candidates for the office of the presidential electors of one party and part of the candidates therefor of one or more other parties or for persons for that office not nominated by any party. For election districts in which voting machines are to be used no paper ballots shall be furnished for any offices to be voted for on the machine except as hereinafter provided.

167 §485. **Instruction to Voters Before Election.** §8. Before each election at which voting machines are to be used the custodian shall place on public exhibition a suitable number of machines for the proper instruction of voters. Such machines shall be so arranged and so equipped with ballot labels as to best illustrate the method of voting at that election, and so far as practical shall contain the names of the offices to be filled, the names of the candidates to be voted for, together with their proper party designations, and statements of the questions to be voted on. Not more than ten nor less than three days before each election at which voting machines are to be used the board or official charged with the duty of providing ballots shall

publish in newspapers representing at least two political parties a diagram of reduced size showing the face of the voting machine after the official ballot labels are arranged thereon, together with illustrated instructions how to vote and a statement of the locations of such voting machines as shall be on public exhibition; or in lieu of such publication said board or officials may send by mail or otherwise at least three days before the elections a printed copy of same to each registered voter.

167 §487. **Instruction of Election Officials.** §9. The election board of each election district in which a voting machine is used shall consist of one inspector, two judges and two clerks of election. Where more than one machine is to be used in an election district, one additional inspector shall be appointed for each additional machine. In any voting precinct or district where the number of registered voters is less than one hundred the election board may consist of one inspector, one judge and one clerk. Before each election at which voting machines are to be used, the custodian shall instruct all inspectors and judges of election that are to serve thereat in the use of the machine and their duties in connection therewith; and he shall give to each inspector and judge that has received such instructions and is fully qualified to conduct the election with the machine a certificate to that effect. For the purpose of giving such instructions, the custodian shall call such meeting or meetings of the inspectors and judges as shall be necessary. Each inspector and judge shall attend such meeting or meetings and receive such instructions as shall be necessary for the proper conduct of the election with the machine; and, as compensation for the time spent in receiving such instruction each inspector and judge that shall qualify for and serve in the election shall receive the sum of one dollar, to be paid to him at the same time and in the same manner as compensation is paid to him for his services on election day. No inspector or judge of election shall serve in any election at which a voting machine is used unless he shall have received such instruction and is fully qualified to perform his duties in connection with the machine and has received a certificate to that effect from the custodian of the machines: Provided, however, That this shall not prevent the appointment of an inspector, or judge of election, to fill a vacancy in an emergency.

167 §489. **Testing and Preparing Machines.** §10. The county commissioners of a county, the council of a city, or other governing body of any district in which voting machines are to be used shall cause same to be properly prepared therefor; and for that purpose shall employ for such time as is necessary one or more competent persons who shall be known as the voting machine custodians, who shall be sworn to perform their duties honestly and faithfully, and for such purpose shall be considered as officers of election, and shall be paid for the time actually spent in the discharge of their duties in the same manner and amount as other election officers are paid. One custodian shall be employed for each twenty machines; if more than one be employed they shall be selected from the political parties entitled to representation on a board of election officers.

In preparing a voting machine for an election, the custodian shall, according to the printed directions furnished by the county commissioners, council or other governing body, arrange the machine and labels therefor so that it will in every particular meet the requirements for voting and counting at such election, thoroughly test same, and certify thereto to said commissioners, council, or other governing body. A voting machine may be so arranged for an election that the names of candidates nominated independently may be placed in the same party row with those nominated by a political party entitled to the use of a party voting device, provided such placing does not prevent such independently nominated candidates from being voted for individually, and provided it does not prevent or interfere with the operating of the party voting device of such party. It may be so arranged that candidates nominated independently, or by political organizations which have nominated but one candidate, each shall be placed in the same party row and voted for individually; and in that event the party voting device of such party row shall be locked against movement, and the political designations of such candidates shall be printed upon the ballot labels in connection with their names.

Before preparing the voting machine for any election, the custodian shall give written notice to at least three of the principal political parties stating the time and place where machines will be prepared, at which time one representative of each of such political parties shall be afforded an opportunity to see that the machines are in proper condition for use in the election. Such representatives shall be sworn to faithfully perform their duties and shall be regarded as election officials, but shall not interfere with the custodians or assume any of their duties and shall serve without pay. When a machine has been so examined by such representatives, it shall be sealed with a numbered metal seal, and such representative shall certify to the number of the machine; that the public counter and all the candidate and question counters register "000"; the number registered on the protective counter, and the number or other designating mark on the seal. After being prepared for the election each machine shall be examined by some person other than the custodian preparing it and a certificate thereof filed with the county commissioners. The custodian shall cause all voting machines to be delivered to the polling places in charge of an authorized official who shall certify to their delivery in good order on the certificate furnished therefor. After such delivery the county commissioners or council shall provide proper protection therefor. The county commissioners, council, board, or officials, in charge, shall provide a lantern or proper light for every machine, which light shall be in good order and give sufficient light to enable voters while in the booth to read the ballot labels, and suitable for use by the election officers in examining the counters.

167 §491. **Delivery of Election Supplies.** §11. The board of officials having charge of the elections, shall cause to be delivered to the inspector or one of the judges of election not later than forty-five minutes before the time for opening the polls the keys for the voting machine, which shall be delivered in a sealed envelope on which shall be written the designation and location of the election district, the number of the voting machine, the number or other designative mark on the seal, and the number registered on the protective counter as reported by the custodian for which a receipt shall be taken on the blank attached thereto, two diagrams, one extra set of ballot labels, one envelope containing seal for sealing the machine after the polls are closed, one envelope for the return of the keys, two statements of canvass, and all other supplies necessary for conducting the election.

167 §493. **Opening Polls.** §12. The election officers of each election district in which a voting machine is to be used shall meet at the polling place thereof at least forty-five minutes before the time set for opening the polls, and before unlocking the machine for voting shall proceed as follows: They shall see that the voting machine is placed where it can be conveniently attended by the election officers and conveniently operated by the voters, and where, unless its construction requires otherwise, the ballot labels thereon can be plainly seen by the election officers and the public when not being voted on. They shall see that the model is placed where each voter can conveniently operate it and receive instructions thereon as to the manner of voting, before entering the machine booth. They shall post one diagram inside the polling room and one outside, in places where the voters can conveniently examine them. They shall see that the lantern or other means provided for giving light is in such condition that the voting machine is sufficiently lighted to enable voters to readily read the names on the ballot labels. They shall see that the ballot labels are in the proper places on the machine. They shall see if the number or other designating mark on the seal sealing the machine, also the number registered on the protective counter, agree with the number written on the envelope containing the keys; and if same do not agree they shall at once notify the custodian and delay unlocking the machine and opening the polls until he shall have re-examined the machine. If such numbers or marks do so agree the election officers shall then proceed to see if the public counter and all the candidate and question counters register "000". If any of such counters shall be found to register some number other than "000", the judge of election shall at once notify the custodian who shall set such counter at "000". After performing

their duties as provided in this section, the election officers shall certify thereto in the appropriate places on the statement of canvass as provided thereon. When the polls are declared open, the inspector or judge of election shall break the seal and unlock the machine for voting.

167 §495. **Conducting the Election.** §13. Before each voter enters the voting machine [booth] each clerk shall insert in his list of voters opposite the voters name the letter V and the number of his vote. The election officers shall, so far as possible, inform him how to operate the machine and illustrate same upon the model, and call his attention to the diagram. No voter shall remain within the voting machine booth longer than two minutes, and if he shall refuse to leave at the end of that time, he shall be removed by the election officers: Provided, however, That they may grant him a longer time if other voters are not waiting to vote. Whenever a voter who has the right to vote only on certain offices and certain questions shall enter the machine, the election officer shall so adjust same that he can vote on such office and questions, but on no others. If any voter shall, in the presence of the election officers, declare that by reason of physical disability he is unable to register or record his vote upon the machine, two election officers of opposite political parties shall enter the voting machine [booth] with him and indicate and register his vote for such candidates and for or against such questions as he shall designate. If any voter shall, after entering the voting machine, ask for information regarding its operation, the election officers shall give him such necessary information. Any election officer who shall deceive any voter in registering or recording his vote under this section, or who shall register or record such vote in any other way than as designated by such voter, or who shall give information to any person as to what candidates or for or against what questions such voters voted, or who shall seek to suggest or persuade any voter to vote for any party, or for any candidate, or for or against any question shall be guilty of a felony and shall be punished by being fined not less than fifty dollars nor more than five hundred dollars or imprisoned in a state prison for not less than six months or more than one year or by both such fine and imprisonment. Except as herein provided for in cases of physically disabled voters, the operation of voting shall be secret. The election officers shall occasionally examine the face of the machine and the ballot labels to determine if same have been injured or tampered with. No voter shall be permitted to enter the machine booth or move the operating lever more than once.

In case any voting machine used in any election district shall, during or before the time the polls are opened, become injured so as to render it inoperative in whole or in part, it shall be the duty of the judge immediately to give notice thereof to the officials charged with the care of the machine, and it shall be the duty of said official, if possible, to repair the machine at once, or to substitute another machine for the injured machine; and, at the close of the polls, if a machine has been so substituted the records of both machines shall be taken and the votes shown on their corresponding counters shall be added together in ascertaining the result of the election. If no other machine can be procured for use at such election, and the injured machine cannot be repaired in time for further use at such election, the officers of said election may permit the use of unofficial paper ballots by the voters, which ballots may be received by the election officers, and placed by them in a receptacle, to be provided therefor and counted with the votes registered on the voting machine, and the result declared the same as though there had been no accident to the voting machine; any marking of such unofficial ballots by the voters which shall clearly indicate their intentions shall be deemed a proper and sufficient method of marking such ballots; the unofficial ballots thus voted shall be preserved and returned to the county commissioners, city council or other governing body, with a certificate or statement setting forth how and why the same came to be voted. For this purpose the printed diagram of reduced size referred to in section eight (8) of this act, may be used if such can be procured.

167 §497. **Canvassing the Vote.** §14. At the hour for closing the polls, the judge of election shall declare the polls of the election closed and shall

not permit any further operation of the machine except provided as follows, namely: That such voters as shall at the hour of closing be within the polling room and awaiting their turn to vote shall be considered as having begun the act of voting and shall be permitted to cast their votes upon the machine. As soon as such voters have voted, the election officers shall lock and seal the machine, unlock and open the doors of the counter compartment, and canvass the votes registered on the counters therein and the votes recorded on or in the device or devices for voting for persons not nominated and shall make two statements of canvass thereof in the following manner: One election officer shall call the designating number and letter of each candidate's counter in the order given on the statement of canvass, and another election officer under the scrutiny of one of a different political party shall repeat such number and letter as it is read, and announce the vote registered on such counter, which shall thereupon be entered in ink on each of the statements of canvass. The canvass of each office shall be completed before proceeding to the next. The vote on each question shall be canvassed in the same manner. The votes cast on the irregular ballots shall then be canvassed. All votes for persons whose names do not appear on the ballot labels must be cast in the proper places on or in the device for irregular ballots; and all votes for persons whose names do appear upon the ballot labels must be cast on the counters therefor, and any votes not so cast shall not be counted: Provided, however, That all elections at which presidential electors are voted for with one device, the voter may vote on or in the device for irregular ballots in part for the presidential electors of one party and in part for those of one or more other parties, or in part or in whole for persons not nominated by any party. After completing and writing down the canvass of the votes cast, the election officers shall verify the same by comparing the figures on the statements of canvass with the figures on the counters in the machine and the names recorded on or in the device for voting for persons not nominated, and shall then certify, in the appropriate place on each of these statements of canvass, as to the number of voters that voted at the election as shown by the poll list and by the number registered on the public counter; the number registered on the protective counter and the number or other designating marks on the seal with which the machine has been sealed. After completing and certifying to the statements of canvass, the inspector or a judge shall read therefrom in a distinct voice the name of each candidate, the designating number and letter of his counter as stated thereon, and the vote entered for each; also the vote for and against each question. During the canvassing and announcing of the vote, the counter compartment shall remain open, and opportunity shall be given any person lawfully present to examine the counters to determine the correctness of the vote as announced. The counter compartment shall then be locked and all the keys of the machine shall be delivered in a sealed envelope to the officers or board in charge of the election. One copy of the statement of canvass shall be delivered forthwith in a sealed envelope to the office of the county auditor, city comptroller, city clerk, or other governing body, and if the election be one at which state or county offices are voted for, one copy of the returns shall be delivered in a sealed envelope to the county clerk.

167 §499. **Provisions for Re-Canvass of Vote.** §15. The registering mechanism of each voting machine used in any election shall remain locked and sealed against operation for a period of thirty days following such election: Provided, however, That whenever it shall appear that there is a discrepancy in the returns of any election district, the county commissioners, council, board or other governing body shall summon the inspector and judges of election thereof, who shall in their presence make a record of the number or other designating mark on the seal, and the number on the protective counter, open the counter compartment, and, without unlocking said machine against voting, shall re-canvass the vote cast thereon. Before making such re-canvass the county commissioners, council or board, shall give notice in writing to the custodian and to each political party or organization that shall have nominated candidates for the election, of the time and place

where said re-canvass is to be made: and each of such political parties or organizations may send two representatives to be present at such re-canvass. If, upon such re-canvass, it should be found that the original canvass of the returns has been correctly made from the machine, and that the discrepancy still remains unaccounted for, the county commissioners, council, board or other governing body, with the assistance of the custodian, shall in the presence of the said inspector and judges of election and the authorized representatives of the several political parties or organizations, unlock the voting and counting mechanism of said machine and proceed to thoroughly examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in the returns from said machine. Before being tested the counters shall be set at "000", after which each counter shall be operated at least one hundred times. After the completion of said examination and test, the custodian shall then and there prepare a statement in writing giving in detail the result thereof, and said statement shall be witnessed by the persons present and shall be filed with the officer or board in charge of the election.

167 §501. **Penalty for Tampering With Machine.** §16. Any person who shall tamper with or injure or attempt to injure any voting machine to be used or being used in an election, or who shall prevent or attempt to prevent the correct operation of such machine, or any unauthorized person who shall make or have in his possession a key to a voting machine to be used or being used in an election, shall be guilty of a felony and shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars or imprisonment in the state prison for not less than one year or more than five years, or both such fine and imprisonment.

167 §503. **Joint Purchase and Use of Machine.** §17. In purchasing the necessary voting machines to be used at general, primary or other elections, as herein provided, the board of county commissioners of the several counties, and the legislative bodies of the incorporated cities, towns or districts therein, may by agreement entered into by said board of county commissioners and the legislative body of any incorporated city, town or district in such county, provide for the joint purchase and subsequent ownership thereof, and for the care, maintenance and use of the same.

167 §505. **Primary and Election Laws Applicable.** §18. All the provisions of the primary and election laws and of any city charter or ordinance not inconsistent with this act shall apply to all elections in districts or precincts where voting machines are used; and any provisions of law or of any city charter or ordinance which conflict with the use of such machines as herein set forth, shall not apply to the districts or precincts in which voting machines are used; and all acts or parts of acts or city charters or ordinances in conflict with any of the provisions of this act, shall be of no force or effect in election districts or precincts where voting machines are used.

AN ACT to carry out the provisions and to facilitate the operation and effect of sections 33 and 34 of article 1 of the Constitution relating to the recall of elective public officers, to prevent fraud, and providing penalties for violations thereof. Approved March 21, 1913. Laws '13 ch. 146.

167 §507. **Recall of Elective Officers—Charges.** §1. That whenever any legal voter or committee or organization of legal voters of the state or of any political subdivision thereof shall desire to demand the recall and discharge of any elective public officer of the state or of such political subdivision, as the case may be, under the provisions of sections 33 and 34 of article 1 of the constitution, he or they shall prepare a typewritten charge, reciting that such officer, naming him and giving the title of his office, has committed an act or acts of malfeasance, or an act or acts of misfeasance while in office, or has violated his oath of office, or has been guilty of any two or more of the acts specified in the constitution as grounds for recall, which charge shall state the act or acts complained of in concise language, without unnecessary repetition, and shall be signed by the person or persons making the same, give their respective post office addresses, and be verified under oath that he or they believe the charge or charges to be true.

167 §509. **Charges, Where Filed.** §2. In case the officer whose recall is to be demanded be a state officer, the person making the charge shall file the same with the secretary of state. In case the officer whose recall is to be demanded be a county officer, the person or persons making the charge shall file the same with the county auditor. In case the officer whose recall is to be demanded be an officer of an incorporated city or town, the persons making the charge shall file the same with the clerk of said city or town. In case the officer whose recall is to be demanded is an officer of any other political subdivision of the state, the persons making the charge shall file the same with the officer whose duty it is to receive and file petitions for nomination of candidates for the office concerning the incumbent of which the recall is to be demanded.

167 §511. **Ballot, Form of Charges.** §3. If the acts complained of in the charge or acts of malfeasance or misfeasance while in office, or a violation of the oath of office, as specified in the constitution, the officer with whom the charge is filed shall formulate a ballot synopsis of such charge of not to exceed two hundred words, which shall set forth the name of the person charged, the title of his office, and a concise statement of the elements of the charge, and shall notify the persons filing the charge of the exact language of such ballot synopsis, and attach a copy thereof to and file the same with the charge, and thereafter such charge shall be designated on all petitions, ballots and other proceedings in relation thereto by such synopsis.

167 §513. **Form of Petition.** §4. Upon being notified of the language of the ballot synopsis of the charge, the persons filing the charge shall cause to be printed on single sheets of white paper of good quality twelve inches in width by fourteen inches in length and with a margin of one and three-fourths inches at the top for binding, blank petitions for the recall and discharge of such officer. Such petitions shall be substantially in the following form.

WARNING.

Every person who shall sign this petition with any other than his true name, or who shall knowingly sign more than one of these petitions, or who shall sign this petition when he is not a legal voter, or who shall make herein any false statement, shall be fined, or imprisoned, or both.

Petition for the Recall of (here insert the name of the office and of the person whose recall is petitioned for) to the Honorable (here insert the name and title of the officer with whom the charge is filed).

We the undersigned citizens of (the State of Washington or the political subdivision in which the recall is invoked, as the case may be) and legal voters of the respective precincts set opposite our respective names, respectfully direct that a special election be called to determine whether or not (here insert the name of the person charged and the office which he holds) be recalled and discharged from his office, for and on account of (his having committed the act or acts of malfeasance or misfeasance while in office, or having violated his oath of office, as the case may be), in the following particulars: (here insert the synopsis of the charge); and each of us for himself says: I have personally signed this petition; I am a legal voter of the State of Washington in the precinct and city (or town) and county written after my name, and my residence address is correctly stated.

Petitioner's Signature.	Residence Ad- dress, Street and Number, if any.	Precinct Name or Number	Ward Number	City or Town	County
(Here follow 20 numbered lines divided into columns as below.)					
1.
2.
3.
etc.					

I, the undersigned, hereby certify that I am the officer of the city (town or precinct) of, county of, State of Washington, having the custody of the registration books containing the signatures, addresses and precincts of the registered legal voters of said city (town or precinct);

that I have carefully compared the signatures on the foregoing petitions with said registration books, and the signatures on the petitions opposite which I have written my initials are the signatures of legal voters of the State of Washington, and of the political subdivision from which said officer sought to be recalled was elected.

Dated the.....day of....., 19.....

.....
of the city (town or
 precinct of.....
 (Seal) by.....Deputy.

167 §515. **Certificates, where No Registration.** §5. Blank petitions for circulation in precincts where registration of voters is not required shall bear certificates in lieu of those contained in the foregoing form, which shall be signed by a justice of the peace, road supervisor, member of a school board or a postmaster, to the effect that he resides in the precinct, (naming it) and is acquainted with the legal voters thereof, and that he believes the signatures opposite which he has written his initials are the signatures of legal voters of such precinct.

167 §517. **Size of Petitions.** §6. Each such recall petition for circulation and signing shall at the time of signing, certifying and filing with the officer with whom the charge is filed, as hereinafter in this act provided, consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title and form of petition on each sheet, but with the prescribed form of certificate only on the last sheet, and a full, true and correct copy of the charge against such officer referred to therein, printed on sheets of paper of like size and quality as the petition and firmly fastened together.

167 §159. **Checking Petitions.** §7. Every recall petition, before it is filed with the officer with whom the charge is filed as hereinafter provided, shall be filed with the officer having custody of the registration books containing the signatures, addresses, and precincts of the registered voters of the city, town or precinct, as the case may be, where the persons who have signed such petition claim to be legal voters. Upon the filing of any such petition it shall be the duty of such officer to forthwith compare or cause a deputy to compare the signatures, addresses and precinct numbers on such petition with said registration books. The officer or deputy making the comparison shall place his initials in ink opposite the signatures of those persons who are shown by the registration books to be legal voters, and shall certify upon the last signature sheet of such petition that the signatures so initialed are the signatures of legal voters of the State of Washington and of the political subdivision affected by such recall petition, and shall sign such certificate and attach thereto the seal of the registration officer, if such officer have a seal, and return such petition to the person filing the same upon demand. The omission to fill any blank shall not prevent the initialing or certification of any name, if sufficient information is given to enable the officer, by a comparison of the signatures, to identify the voter. Every such petition bearing the signatures of persons residing in precincts where registration of voters is not required, before it is filed with the secretary of state, shall be submitted to and initialed and certified by a justice of the peace, road supervisor, member of a school board or a postmaster residing in such precinct in the form provided in section 2 of this act. It shall be the duty of such justice of the peace, road supervisor or member of a school board to examine, and initial and certify the signatures of legal voters on any such petition upon demand.

167 §521. **Submitting Recall.** §8. When a person, committee or organization demanding the recall of any public officer shall have secured upon such recall petition the signatures of a number of legal voters equal to twenty-five per cent. of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election, in case such officer be a state officer, an officer of a city of the first class, a member of a school board in a city of the first class, or a county officer of a county of the first, second or third class; or the signatures of a number

of legal voters equal to thirty-five per cent. of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election, if the officer whose recall is demanded is an officer of any other political subdivision, city, town, township, precinct or school district than those hereinbefore mentioned, or is a state senator or representative, he or they may submit said petition to the officer with whom the charge is filed for filing in his office. At the time of submitting such petition the person, committee or organization submitting the same shall file with the officer to whom such petition is submitted a full, true and detailed statement, giving the names and post office addresses of all persons, corporations and organizations who have contributed or aided in the preparation of the charge and in the preparation, circulation and filing of the petition, with the amount contributed by each, and a full, true and detailed statement of all expenditures, giving the amounts expended, the purpose for which expended and the names and post office addresses of the persons and corporations to whom paid, which statement shall be verified by the affidavit of the person or some member of the committee or organization making the charge, and until such statement is filed the officer shall refuse to receive such petition.

167 §523. **Hearing on Petitions.** §9. Upon the filing of such petition in his office, the officer with whom the charge was filed shall stamp on each of said petitions the date of filing, and shall notify the persons filing the same and the officer whose recall is demanded by said petition of the date when said petitions will be canvassed, which date shall be not less than five or more than ten days from the date of filing, and shall, at the time set for said canvass, in the presence of at least one person representing the petitioners and in the presence of the person charged, or some one representing him, if either should desire to be present, detach the sheets containing the signatures and certificates from the copies of the charge, and cause them to be firmly attached to one or more copies of the charge in such volumes as will be most convenient for canvassing and filing, and shall proceed to canvass and count the names of certified legal voters on such petitions. If he shall find the same person has signed more than one petition, he shall reject all signatures of such person from the count. If at the conclusion of the canvass and count, it shall be found that such petition bears the requisite number of signatures of certified legal voters, the officer with whom the petition is filed shall fix a date not less than ten or more than fifteen days after the conclusion of the canvass, for calling a special election to determine whether or not the officer charged shall be recalled and discharged from his office, and shall on said date call such special election, to be held not less than thirty nor more than forty days from the date of the call, and give notice thereof in the manner required by law for calling special elections in the state or in the political subdivision, as the case may be. But if it be found that the petition does not contain the requisite number of signatures of certified legal voters, the officer shall so notify the persons filing the petition, and at the expiration of thirty days from the conclusion of the count shall, unless prevented therefrom by the injunction or mandate of the courts as hereinafter provided, destroy the petitions.

167 §525. **Record of Fraudulent Signatures.** §10. The officer making the canvass as hereinabove provided shall keep a record of all names appearing on said petitions which are not certified to be legal voters of the state or of the political subdivision, as the case may be, and of all names appearing more than once on said petition, and shall report the same to the prosecuting attorneys of the respective counties where such names appear to have been signed, to the end that prosecutions may be had for violation of this act.

167 §527. **Conduct of Election.** §11. The special election to be called as hereinabove provided shall be carried on and conducted in the same manner as general state, county, municipal or other political subdivision elections, as the case may be, are conducted and carried on, and it shall be the duty of all officers of the state, county, municipality or other political subdivisions to provide for the holding of such election and the necessary places and officers, ballot boxes, ballots, poll books and returns as are required by law for holding general elections. The ballots at any such election shall contain a

full, true and correct copy of the ballot synopsis of the charge hereinabove provided for, and shall be so arranged that any voter can, by making one cross (X) express his desire to have the officer charged recalled or discharged from his office, or retained therein. Substantially the following form shall be a compliance with the provisions of this section:

RECALL BALLOT.

(Here insert the ballot synopsis of the charge.)

FOR the recall of (here insert the name of the officer).....☐
 AGAINST the recall of (here insert the name of the officer).....☐

167 §529. **Returns of Election.** §12. The election officers in the various precincts shall count the ballots and make returns thereon to the officer of the county, municipality or other political subdivision, as required by law for making returns of general elections: Provided, That in case the officer whose recall is demanded is the officer to whom, under the law, returns of elections are made, such returns shall be made to the officer with whom the charge is filed, and who called the special election; and in case of an election for the recall of a state officer, the county canvassing boards of the various counties shall canvass and return the result of such election to the officer calling such special election.

167 §531. **Filling Vacancy.** §13. Upon the completion of the returns of any such election to the proper officer, he shall cause to be published in the manner required by law for the publication of the results of general elections, the result of such election, and a majority of all votes cast at such recall election be for the recall of the officer charged, such officer shall thereupon be recalled and discharged from his office, and the office shall thereupon become and be vacant; and such vacancy shall be filled in the manner provided by the constitution and the laws of the State of Washington, or the charter and ordinances of the municipality, as the case may be.

167 §533. **Jurisdiction of Courts.** §14. The superior court of the county constituting or containing any political subdivision of the state in which the recall is invoked as in this act provided shall have original jurisdiction to compel the performance of any act required of any officer of such political subdivision under the provisions of this act, in case such officer refuse to perform the same, or to prevent the performance by any such officer of any act in relation to the recall not in compliance with the provisions of this act; and the supreme court shall have like original jurisdiction in relation to state officers and revisory jurisdiction over the decisions of the superior courts: Provided, That any proceeding to compel or prevent the performance of any such act shall be begun within ten days from the time the cause of complaint arises, and shall be considered an emergency matter of public concern and take precedence over other cases, and be speedily heard and determined; and any proceeding to review a decision of any superior court shall be begun and perfected within fifteen days after such decision, and shall be by the supreme court considered an emergency matter of public concern, and speedily heard and determined.

167 §535. **Penalties, False Names, Etc.** §15. Every person who shall sign any recall petition provided for in this act with any other than his true name, shall be guilty of a felony; and every person who shall knowingly sign more than one of such petitions for the recall of any officer, or who shall sign any such petition when he is not a legal voter, or who shall make on any such petition any false statement as to his place of residence, and every registration officer who shall make any false report or certificate on any such petition shall be guilty of a gross misdemeanor.

167 §537. **Penalties Generally.** §16. Every officer who shall wilfully violate any of the provisions of this act, for the violation of which no penalty is herein prescribed, or who shall wilfully fail to comply with the provisions of this act; and every person who shall for any consideration, compensation, gratuity, reward or thing of value or promise thereof sign or decline to sign any recall petition, or who shall advertise in any newspaper, magazine or other periodical publication or in any book, pamphlet, circular or letter or by

means of any sign, signboard, bill, poster, handbill or card or in any manner whatsoever, that he will either for or without compensation or consideration circulate, or solicit, procure or obtain signatures upon, or influence or induce or attempt to influence or induce persons to sign or not to sign any recall petition or vote for or against any recall; or who shall for pay or any consideration, compensation, gratuity, reward or thing of value or promise thereof circulate, or solicit, procure or obtain or attempt to procure or obtain signatures upon any recall petition; or who shall pay or offer or promise to pay, or give or offer or promise to give any consideration, compensation, gratuity, reward or thing of value to any person to induce him to sign or not to sign, or to circulate or solicit, procure or attempt to procure or obtain signatures upon any recall petition, or to vote for or against any recall; or who shall by any other corrupt means or practice or by threats or intimidation interfere with or attempt to interfere with the right of any legal voter to sign or not to sign any recall petition or to vote for or against any recall; or who shall receive, accept, handle, distribute, pay out or give away either directly or indirectly any money, consideration, compensation, gratuity, reward or thing of value contributed by or received from any person, firm, association or corporation having his, their or its residence or principal office outside of the State of Washington, or corporation the majority of whose stockholders are non-residents of the State of Washington, for any service, work or assistance of any kind done or rendered for the purpose of aiding in procuring signatures upon any recall petition or the adoption or rejection of any recall, shall be guilty of a gross misdemeanor.

TITLE 171—EMINENT DOMAIN.

171 §15.

Procedure not exclusive if fund has been paid into court, *State ex Smith v. Court*, 71 W.

171 §31.

Act constitutional, *Roberts v. Seattle*, 63 W. 573.

Agreement to pay costs waives damages

—retraction of waiver, *Seattle School Dist. v. Seattle*, 63 W. 245.

City may widen street and give it to railroad, *Tacoma v. Brown*, 69 W. 538.

171 §33.

Ordinance may be amended before rights vest, *In re Leary Ave.*, 72 or 73 W.

School district property liable, *Seattle School Dist v. Seattle*, 63 W. 245.

171 §35. **Petition.** §3. Whenever any such ordinance shall be passed by the legislative authority of any such city for the making of any improvement authorized by this act or any other improvement that such city is authorized to make, the making of which will require that property be taken or damaged for public use, such city shall file a petition in the superior court of the county in which such land is situated, in the name of the city, praying that just compensation, to be made for the property to be taken or damaged for the improvement or purpose specified in such ordinance, be ascertained by a jury or by the court in case a jury be waived. R&B §7770; L. '13, ch. 11.

171 §51.

Condemnor not liable for payment to wrong party, *Carton v. Seattle*, 66 W. 447.

171 §59.

Grading and planking may be subsequently assessed, *Martenis v. Tacoma*, 66 W. 92.

Damages not anticipated may be afterward recovered, *Hinckley v. Seattle*, 74 W.

Condemnations for benefit of railroad, the latter paying awards, benefits may be offset, *Spokane v. Thompson*, 69 W. 650.

171 §61.

Matter in judgment when not in issue presumed by consent, *Michelson v. Seattle*, 63 W. 230.

Owner at time of judgment rather than at time of verdict takes proceeds of judg-

ment, *Yesler Logging Co. v. Seattle Elec. Co.*, 74 W.; *Damon v. Ryan* id.

City cannot appeal after paying award into court, *Spokane v. Cowles*, 67 W. 539.

171 §63.

Ends duty to former owners, *Carton v. Seattle*, 66 W. 447.

171 §65.

Where an ordinance provides that the cost of a street improvement should be borne wholly by the property benefited, neither the commissioners nor the court has power to assess the city, *Spokane v. Curtiss*, 66 W. 555.

171 §67.

Within the power of the council to make the apportionment of benefits between city and private owners, and for commissioners

to act only when the council fails to do so, In re Fifth Ave., 66 W. 327.

171 §71.

The only working rule is to sustain the commissioners, Spokane v. Miles, 72 W.

171 §75.

Action of commissioners will be reviewed only for fraud etc., In re Twelfth Ave., 66 W. 97.

Not proper to include property that receives merely a general benefit, In re Fifth Ave., 66 W. 327.

171 §85.

Court must keep within the issues raised by the objections, Spokane v. Curtiss, 66 W. 555.

171 §125.

City not liable for damage by surface waters impounded by grading, Wood v. Tacoma, 66 W. 266.

171 §127.

City properly retracted abandonment, Spokane v. Pittsburg Land & Imp. Co., 73 or 74 W.

171 §129.

Mandamus will lie to compel issuance of warrant for damage, State ex Murray v. Hillyard, 73 W.

171 §135.

Defense of res judicata properly sustained, Carpenter-McNeill Inv. Co. v. Spokane, 73 W.

171 §173.

Condemnation may include purposes of old line of railroad with new, State ex Flint v. Court, 69 W. 300.

Condemnation cannot be had for same use, State ex Harbor Co. v. Court, 65 W. 129.

Terminal company 1100 feet in length may condemn, State ex Bremer v. Court, 69 W. 278.

Failure to allege object of appropriation not fatal defect—other lands available no defense—date of condemnation—superior use to another railroad, Oregon, etc., R. & N. Co. v. Wilkinson, 188 Fed. 363.

171 §176.

Bringing of suit is a sufficient showing of the adoption of a particular plan, State ex rel. Weyerhaeuser Co. v. Court, 71 W.

171 §177.

Offers for land not admissible, North Coast R. Co. v. Newman, 66 W. 374.

Damage to leasehold—measure—renewals, North Coast R. Co. v. Kraft Co., 63 W. 250.

If condemnation by city benefits may be offset, Spokane v. Thompson, 69 W. 651.

171 §178.

Title vests when money paid—abandonment—taxes, North Coast Ry. v. Gentry, 73 W.

Lease for private purpose forfeits condemned rights, Neitzel v. Spokane I. R. Co., 65 W. 100.

Corporation acquires only such qualified interest as it needed for public use, Neitzel v. Spokane I. R. Co., 65 W. 100.

171 §179.

Petitioner not obliged to hunt out true owner, Carton v. Seattle, 66 W. 447.

Payment of award into court vests title, Silverstone v. Harn, 66 W. 440.

171 §180a.

A jury's award of damages will not be disturbed on appeal where it is supported by substantial evidence, C., M. & P. S. Ry. v. Thayer, 65 W. 402.

171 §227.

Riparian owner on navigable stream has no rights as such owner, State ex Ham v. Court, 70 W. 442.

171 §231.

Lower riparian owner may not divert water appropriated by upper riparian owner, Miller v. Baker, 68 W. 19.

171 §247.

Acts looking to an appropriation of water will not make a belated posting of the required notice relate back so as to give a prior right as against one who has posted notice and proceeded with diligence, State ex rel. Ham v. Court, 70 W. 442.

171 §249.

Locator failed to do necessary work, Spokane Portland Cement Co. v. Larson, 71 W.

171 §279.

Court may determine whether the specific land sought is necessary, State ex rel. Postal Telegraph Co. v. Court, 64 W. 189.

171 §283.

Does not limit right of corporation whose objects are both public and private, State ex rel. Lyle Co. v. Court, 70 W. 486.

AN ACT relating to the taking of private property for private ways of necessity and for drains, flumes and ditches on or across the lands of others for agricultural, domestic or sanitary purposes. Approved March 20, 1913. Laws '13, ch. 33.

171 §305. **Private Ways of Necessity—Logging, Etc.—Ways.** §1. An owner, or one entitled to the beneficial use, of land which is so situate with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity or to construct and maintain any drain, flume or ditch, on, across, over or through the land of such other, for agricultural, domestic or sanitary purposes, may condemn and take lands of such other sufficient in area for the construction and maintenance of such private way of necessity, or for the construction and maintenance of such drain, flume or ditch, as the case may be. The term "private way of necessity," as used in this act, shall mean and include a right of way on, across, over or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, logging roads, flumes, canals, ditches, tunnels, tramways and other structures upon, over

and through which timber, stone, minerals or other valuable materials and products may be transported and carried.

171 §307. **Procedure in Condemnation.** §2. The procedure for the condemnation of land for a private way of necessity or for drains, flumes or ditches under the provisions of this act shall be the same as that (171 §173) provided for the condemnation of private property by railroad companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation by railroad companies.

171 §309. **Common Carrier—Rates.** §3. That any person or corporation availing themselves of the provisions of this act for the purpose of acquiring a right-of-way for a logging road, as a condition precedent, contract and agree to carry and convey over such roads to either termini thereof any of the timber or other produce of the lands through which such right is acquired at any and all times, so long as said road is maintained and operated, and at reasonable prices; and a failure so to do shall terminate such right-of-way. The reasonableness of the rate shall be subject to determination by the public service commission.

175 §1.

Territorial probate and escheat acts construed, *Christianson v. King County*, 196 Fed. 791.

179 §1.

Notes to sections 1 and 3 on preceding page of Code.

183 §1.

Requires an owner to fence only against stock lawfully at large, and not against stock in an adjoining closed field, *Kobayashi v. Strangeway*, 64 W. 36.

187 §29.

Note on page 1042 of Code.

TITLE 191—FISH.

191 §135 *passim* §177.

Repealed 207 §273 Supp.

AN ACT for the protection of fish in Lake river and sloughs of the Columbia river in Clarke county, limiting the catch of black bass and croppies in the same waters. Approved March 19, 1913. Laws '13, ch. 125.

191 §182. **Sloughs in Clarke County.** §1. Every person, firm or corporation who shall fish for or catch fish excepting carp with any net, seine, trap, set net or similar appliance in Lake river or any of the sloughs of the Columbia river in Clarke county, Washington, shall be guilty of a misdemeanor.

191 §182a. **Catch Limit.** §2. Every person who shall with hook and line, commonly called angling, catch more than twelve black bass or more than fifty croppies in any one day in any of the waters described in section 1 of this act, shall be guilty of a misdemeanor.

195 §5.

Dismissal as to one clause of section does not preclude information on another, *State v. Poole*, 64 W. 47.

195 §15 *passim* §27.

Repealed 9 §117 Supp.

199 §15.

Permits conviction for burning stumps in one's own dooryard, *State v. Hendricks*, 68 W. 670.

199 §43.

This section repealed by act at 199 §1, *State v. Hendricks*, 68 W. 670.

TITLE 203—FRAUDS, STATUTES OF.

203 §3.

Where partnership interest not capable of manual delivery statute held not to apply, *Gaisell v. Johnson*, 68 W. 470.

Principal creditor agreeing to pay for contractor is an original promise, *McKay v. Northern Bank & Tr. Co.*, 69 W. 186.

Broker did not have exclusive contract, could not recover if owner sold, *Hammond v. Mau*, 69 W. 204.

Promise of vendee to pay balance on mortgage is original, *Bicknell v. Henry*, 69 W. 408.

Judicial sales are not within the statute, *Rice v. Ahlman*, 70 W. 12.

Promise of agent of indemnity company to pay made prior to payment by insured is within the statute, *Ford v. Aetna Co.*, 70 W. 29.

Where pleading does not disclose facts

defense of statute may be made without pleading, *Taylor v. Howard*, 70 W. 217.

Oral contract sustained where both parties submitted evidence, *Stocking v. Boyer*, 70 W. 615.

Oral contract between brokers to divide commissions not within statute, *Orr v. Perky Inv. Co.*, 65 W. 281.

An executory written agreement may be modified or abrogated by a partly performed oral agreement, *Gerard-Fillio Co. v. McNair*, 68 W. 321.

A letter to a broker authorizing the sale of real property at a stated price but failing to state the amount of the commission is insufficient, *Crouch v. Forbes*, 63 W. 564.

Promise of president of a society to pay costs, the society refusing to defend, is an original promise, *Mazzini Society v. Coriat*, 63 W. 273.

Does not apply where owner promises to pay contractor's debt if creditor will not file lien, *Wells & Morris v. Brown*, 67 W. 351.

Applies to any collateral promise to pay another's debts, even if the debtor is a corporation virtually owned by the promisee, *Klenert Dist. Co. v. Bothwell*, 264.

Does not apply to commission agreements between two brokers, *Leigh v. Yancey*, 67 W. 18.

Does not apply to a direct promise to settle account on furnishing promisor future goods, *Davies v. Cary*, 72 W.

A contract by a joint owner of real estate for the employment of a broker to procure a purchaser of real estate must be in writing to be enforceable, *Parker v. Bruggemann*, 72 W.

A broker is entitled to a commission on an oral agreement to find a purchaser for a cafe, when the seller desired, and received, real property as payment therefor, *Merrit v. American Catering Co.*, 71 W.

Contract for sale of specific property does not allow broker's fee for different property, *Reitz v. Bryant*, 71 W.

203 §5.

Delivery held to take case out of statute though test of goods to be made before sale, *Adams County etc. Co. v. Walla Walla Livestock Co.*, 64 W. 285.

203 §7.

Cited in setting aside conveyance in bankruptcy, *Benner v. Scandinavian-Am. Bank*, 73 W.

203 §9.

There is no legal presumption act was not complied with in a sale of the good will, stock and business of a person, *Mooney v. Mooney Co.*, 71 W.

Creditors of seller of a business are entitled to a personal judgment against the purchaser failing to comply with the law, without pursuing the property, or showing that the purchaser still had sufficient of the property to satisfy the judgment, *Friedman v. Branner*, 72 W.

203 §15. **Sales Regulated.** §4. Any sale or transfer of a stock of goods, wares or merchandise, or all or substantially all, of the fixtures and equipment used in and about the business of the vendor, out of the usual or ordinary course of business or trade of the vendor, or whenever substantially the entire business or trade theretofore conducted by the vendor, shall be sold or conveyed or whenever an interest in or to the business or trade of the vendor is sold or conveyed, or attempted to be sold or conveyed, shall be deemed a sale and transfer in bulk in contemplation of this act: Provided, however, That if such vendor produces and delivers a written waiver of the provisions of this act from his creditors as shown by such verified statements then and in that case the provisions of this section shall not apply. R&B. §5299; L. '13, ch. 175.

203 §15.

This is §4 of act L '13 ch. 175. All other sections were vetoed.

TITLE 207—GAME.

207 §11 passim §155.

Repealed 207 §273 Supp.

207 §107. **Sneak, Etc., Boats and Devices Prohibited.** §10. Every person who shall use any sink box or sink boat or sneak boat for the purpose of shooting wild ducks, geese, swan or other water fowl, or who shall use any battery, swivel or pivot gun, or any gun other than one to be held in the hands and fired from the shoulder, at any time, for the purpose of shooting wild ducks, geese, swan, brant or other water fowl; or who shall build any structure in any of the waters of this state for the purpose of shooting therefrom wild ducks, geese, swan, or other water fowl; or who shall at any time between one-half hour after sunset and one-half hour before sunrise fire off any gun or build any fire or flash any light, or burn any powder or other inflammable substance upon the shores of any feeding grounds frequented by wild ducks, geese, swan or other water fowl, with intent thereby to shoot,

kill, injure, destroy or disturb any of such water fowl, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided.

The term "sneak boat" as used in this act shall be deemed to mean any boat, skiff, steam or gasoline launch, or floating battery, except an ordinary open rowboat or canoe propelled by hand with side oars, such oars to be not less than five (5) feet in length and one oar to be used on each side of the boat or canoe. All occupants of such boat or canoe to be in an upright position so that at all times they shall be visible from the waist up while in pursuit of such ducks, geese, brant or other water fowl. R&B §5858; L. '13, ch. 33.

AN ACT for the protection of game birds, waterfowls, shore birds and deer in certain designated territory in the State of Washington, to prevent firing of rifles in said territory, providing punishment for the violation thereof and amending chapter 84 of the Session Laws of 1911, approved March 14, 1911. Approved March 19, 1913. Laws '13, ch. 122.

207 §165. Preserve in Pierce County. §1. Any person who shall hunt, take, kill, trap, snare, maim, destroy or molest any game bird, waterfowls, shore birds or deer at any season of the year in that part of Pierce county, Washington, bounded by the waters of Puget Sound and Commencement Bay, and a line beginning where the line between townships 19 and 20 north intersects the easterly shore of Puget Sound, and running thence east to the corner common to sections 3 and 4, township 19 north, range 3 east and sections 33 and 34, township 20 north, range 3 east; thence due north to the shore of Commencement Bay, or upon the waters of Steilacoom Lake, Gravelly Lake, American Lake, Sequelichew Lake or the islands therein, or within one mile of the shores of any of said lakes, or upon any part of sections 1, 2, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27 and 28, township 19 north, range 2 east, sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29 and 30, township 19 north, range 3 east, and section 34 and the south half of section 27, township 20 north, range 3 east, shall be guilty of a misdemeanor: Provided, That this act shall not apply to persons holding certificates giving the right to take birds, their nests or eggs, for scientific purposes, as now provided by law.

207 §167. Exceptions. §2. Any person who shall discharge any rifle within the above described territory shall be guilty of a misdemeanor: Provided, That this section shall not apply to peace officers, officers or enlisted men in the United States army, and the officers and enlisted men in the National Guard of Washington, or any other state, while engaged in the performance of their respective duties as such officers or enlisted men: And provided further, That this section shall not apply to public or private shooting galleries or rifle ranges.

207 §168. Fines, Disposal of. §3. All fines collected under the provisions of this act shall be turned over to the county treasurer and by him placed in the game protection fund.

AN ACT relating to the protection, propagation, introduction, purchase, and restoration of game birds, game animals, and game fish, creating a chief game warden and a chief deputy game warden, county game commissioners, creating the office of county game wardens, relating to licenses for hunting and fishing, fixing the season for the taking, regulating the transportation and possession of game animals, game birds and game fish, providing penalties and repealing sections 5323 (207 §11), 5327 (207 §65), 5328 (207 §67), 5333 (207 §143), 5337 (207 §155), 5354, 5356 (207 §§25, 105), 5361 (207 §47), 5362 (207 §49), 5363 (207 §51), 5364 (207 §53), 5365 (207 §55), 5367 (207 §59), 5371 (207 §133), 5372 (207 §115), 5379 (191 §161), 5380 (191 §135), 1384 (191 §175), 5385 (191 §177), 5389 (191 §163), of Pierce's 1912 and Remington & Ballinger's Annotated Codes and Statutes of Washington and all other laws in conflict herewith. Approved March 9, 1913, Laws '13, ch. 120.

207 §169. County Game Commission. §1. A county game commission is hereby created, the said game commission to consist of three residents of each

county, and there shall be a county game commission for each county in this state.

207 §171. State and County Game Wardens—Salaries. §2. There shall be appointed by the governor a chief game warden who shall reside west of the Cascade Mountains and a chief deputy game warden who shall reside east of the Cascade Mountains. The chief game warden and chief deputy game warden shall each receive not to exceed the sum of eighteen hundred dollars (\$1,800.00) per year and their necessary traveling expenses while engaged in their official duties, to be paid out of the money received from the state game and fishing licenses to be collected under the provisions of the laws of this state, provided there are sufficient funds received into the state game fund hereafter created with which to make such payments. Traveling expenses shall be first paid, and if there is not sufficient money to pay the full salaries hereby provided for the funds in said fund shall be paid pro rata to the said chief game warden and the chief deputy game warden. The county game commission shall be appointed on the recommendation of the board of county commissioners of each county and the appointment of such commissioners for all counties west of the Cascade Mountains shall be made by the chief game warden, and the appointment of all game commissioners east of the Cascade Mountains shall be made by the chief deputy game warden. The said appointments shall be made upon the recommendation of the county commissioners, but in case the county commissioners fail to recommend such county game commissioners for appointment upon the request of said state game wardens within ten days after written notice so to do, then and in that case the chief game warden may appoint in counties west of the Cascade Mountains, and the chief deputy game warden may appoint for counties east of the Cascade Mountains. The game commission for each county shall appoint a county warden. Each county warden shall receive a salary of not less than twenty-five dollars (\$25.00) per month nor more than one hundred and twenty-five dollars (\$125.00) per month, the amount of which shall be fixed by the county game commission of each county and shall be paid solely out of the money received from county game licenses and fines, and no salary shall be fixed by said commission in excess of the amounts of the receipts herein provided for. The county [state] game warden and the chief deputy game warden shall have general supervision and control of the county game wardens and county deputy wardens, and may transfer them on official business from one county to another whenever in their judgment it is advisable so to do.

207 §173. Duties of County Game Wardens. §3. It shall be the duty of each county warden to make a report annually to the state game warden or the chief deputy game warden, in whose jurisdiction he may reside, and the chief deputy game warden shall make a report annually to the chief game warden, and the chief game warden shall biennially make a report to the governor of the state, which said report shall contain all the information concerning the acts of the county game wardens, and all such other acts connected with the enforcement of the game laws as may come to his notice. The chief game warden and the chief deputy game warden, the game commissions and the county wardens shall have jurisdiction to enforce all of the laws of the state relating to game birds, game animals and game fish. The county game commission shall have an office in the office of the county commissioners at the county seat.

207 §175. Further Duties. §4. Said county game commission shall enforce the laws of the state within their respective counties involving the protection and propagation of all game birds, game animals, game fish and harmless birds and animals. Said county game commission shall have charge of:

1. The propagation and preservation of such varieties of game and game fish as it shall deem to be of public value.
2. The collection and diffusion of such statistics and information as shall be germane to the purpose of this act.
3. The construction, control and management of all county game and game fish hatcheries, including the control of grounds owned or leased for such purposes: Provided, That whenever any county game commission de-

sires to establish a game fish hatchery it shall be the duty of the state fish commissioner to supervise the erection of such hatchery and the planting of any fish fry taken from such hatchery: And provided further, That no person in the State of Washington shall plant any fish or fish fry in any of the bodies of water in the State of Washington without the written consent of the state fish commissioner.

4. The receiving from the United States commissioner or other person, and the gathering, purchase and distribution to the waters of this state of all game fish, spawn or fry.

5. The taking of game fish from the public waters of the state for propagation and stocking of other waters therein.

6. The seizure and disposition of all game birds, game animals and game fish, either taken, killed, transported or possessed contrary to law, and of all dogs, guns, seines, nets, boats, lights, or other instrumentalities unlawfully used or held with intent to use in pursuing, taking, attempting to take, concealing or disposing of the same.

7. The county game commission in their respective counties shall have the power and authority by giving notice thereof by publication for three successive weeks in a newspaper published at the county seat of such county describing such lands to be set aside as a game preserve, to set aside certain parts or portions of their respective counties as game preserves wherein no game bird or game animal or game fish can be caught or killed within the boundaries thereof, for such time and so long as they may see fit and proper: Providing, however, That no game preserve or preserves so set aside by said county game commission shall consist of more than three (3) townships in any one county.

207 §177. Reports of County Wardens. §5. Said county game commission shall, on or before December 1st of each year, submit to the county auditor a detailed report of their actions, including the amount of money received from all sources, an inventory of all game, fish, guns, dogs, seines, nets, and other property seized and sold or destroyed, with the names of the purchasers and the amount received, and an itemized statement of their disbursements. The books and vouchers of said county game commission shall be subject to examination by the public examiner at all times.

207 §179. Employees. §6. The county game commission may appoint and employ a sufficient number of deputy game wardens and office assistants as may be necessary to carry out the purposes of this chapter, and fix their periods of service and compensation.

207 §181. Execution of Writs. §7. The state game wardens, the county game commission and county game warden, and all deputy game wardens appointed by them, shall have full power and authority to serve and execute all warrants and process of the law issued by the courts in enforcing the provisions of this act, or any other law of this state, relating to preservation and propagation of game and game fish, in the same manner as any constable or sheriff may serve and execute the same; and for the purpose of enforcing any game laws of this state they may call to their aid any sheriff, deputy sheriff, constable or police officer, or any other person, and it shall be the duty of all sheriffs, deputy sheriffs, constables or police officers and other persons, when so called upon, to enforce and aid in enforcing any game laws of this state. The state game wardens, the county game commission, the county game warden and deputy game warden shall have the power to arrest without a warrant any person or persons found in the act of violating any law enacted for the purpose of protecting or propagating game or game fish.

207 §183. Bonds. §8. All appointees shall give bonds to be approved by the county game commission, and said bonds filed in the office of the county auditor, conditioned for the faithful discharge of their respective duties as follows: Each regular deputy [county] game warden one thousand dollars.

207 §185. Terms Defined—Agency No Excuse. §9. The words "sell" and "sale" as used shall be construed as meaning a sale or offer to sell or having in possession with intent to sell, use or dispose of the same contrary to law. The word "person" shall be deemed to include partnership, associations and

corporations, and no violation of any of the provisions of the game law shall be excused for the reason that the prohibited act was done as the agent or employe of another, or that it was committed by or through an agent or employe of the person charged. The word "possession" shall be deemed to include both actual and constructive possession as well as control of the article referred to. The terms "waters of the state" shall be held to include all the boundary waters of the state, and the laws of this state shall be deemed to extend and be in force and effect over, upon and in all waters thereof. The terms "any part thereof" or "the parts thereof" whenever used shall be deemed to include the hides, horns, and hoofs of any animal so referred to, and the plumage and skin and every other part of any bird so referred to. The term "fur-bearing animals" shall not be deemed to include deer, elk, moose, caribou, mountain goat, mountain sheep, or gray squirrel.

207 §187. **Inspection of Hotels, Etc.** §10. The state game wardens or any member of the county game commission, the county game warden or any deputy game warden may, at his discretion, from time to time inspect hotels, restaurants, cold storage houses or plants and ice houses commonly used in storing meats, game or fish for private parties, including all buildings used for a like purpose, for the purpose of determining whether game or game fish are kept therein in violation of the laws of this state. Any person in possession or control, or in charge of any hotel, restaurant, storage plant or building referred to, or any part thereof, who refuses or fails to permit the state game wardens, the county game warden or any deputy game wardens to enter any such building, or any part thereof, or any receptacle therein, for the purpose of making such inspection, is guilty of a gross misdemeanor.

207 §189. **Contraband Game, Seizure and Search.** §11. Any game bird, game animal, game fish or any part thereof, caught, killed, shipped or had in possession or under control, contrary to any of the laws of this state, is hereby declared to be contraband. The state game wardens, the county game commission, the county game warden or any deputy game warden, sheriffs and their deputies, constables and police officers, shall seize and take possession of any and all game birds, game animals or game fish, or any parts thereof, which have been caught, taken or had in possession or under control or shipped contrary to any of the laws of this state. Any court having jurisdiction shall, upon complaint showing probable cause for believing that any game bird, game animal, game fish, or any part thereof, caught, taken, killed or had in possession, or under control by any person, or shipped or transported contrary to the laws of the state, is concealed or illegally kept in any building, car or receptacle, issue a search warrant and cause a search to be made in any such place for any game birds, game animals, game fish, or any part thereof, and may cause any building, inclosure or car to be entered and any apartment, chest, box, locker, crate, basket, package, or any other receptacle, whatsoever kind or description, to be broken, opened and the contents thereof examined. All such officers taking or seizing any such game birds, game animals, game fish, or any part thereof, shall at once report all the facts attending the same to the county game commission.

207 §191. **Contraband Devices.** §12. All nets, seines, lanterns, snares, devices, contrivances and materials while in use, or had and maintained for the purpose of catching, taking, or killing, or attracting, or deceiving any game bird, game animal, or game fish, contrary to any of the laws of this state, within this state, or upon or within the boundary thereof, including fish houses, inclosures or other sheltering structures or appliances erected or maintained in any waters, or on the shores of any lake, pond or stream is hereby declared to be a public nuisance. The state game wardens, the county game commission and their deputies, sheriffs and their deputies, constables and police officers, shall, without warrant or process, take, seize, abate or destroy any and all of the same while being used, had or maintained for such purpose, and no liability shall be incurred therefor to any person.

207 §193. **Witnesses.** §13. In any prosecution under the laws of this state a participant in the violation thereof may testify as a witness against any other person violating the same, without incriminating himself in so doing.

The evidence so given shall not be used in any criminal proceedings against such witness.

207 §195. Exchange Specimens. §14. The state game wardens or the county commission may secure by purchase or otherwise, or by exchange, specimens of game birds, game animals, or game fish, with the game commission or game wardens of other counties and states for propagating purposes and not otherwise, and may also grant permission under the seal of said commission to any accredited representative of any incorporated society of natural history to collect for scientific purposes only, nests, eggs, game birds, game animals or game fish protected by the laws of this state. Such specimens shall not be sold or transferred.

207 §197. Dispositions of Fines. §15. All fines collected and bonds forfeited under any of the game laws of this state shall be paid into the county treasury of the county wherein the conviction was had and placed to the credit of the county game fund to be used only for the protection and propagation of game birds, game animals and game fish.

207 §199. Disposition of Other Moneys. §16. All moneys collected by the county game commission upon licenses issued by it, including moneys received for fines and other sources, shall be paid into the county treasury and credited to the game fund, and be used for the purpose of propagating and enforcing the game laws of this state within their respective counties.

207 §201. Rewards. §17. Every person, other than a regular salaried game warden or peace officer, entering a complaint that any of the provisions of this act are violated and a conviction thereon is secured shall be entitled to one-half of the fine imposed and collected by the court in such action: Provided, That said reward to the informer shall not exceed the sum of twenty-five dollars (\$25.00).

207 §203. Obstructing Commission. §18. No person shall obstruct the state game warden, the county game commission, or any county game warden or deputy game warden, while engaged in gathering game fish spawn; nor shall any person place in any stream or river any logs or other debris at any time when said state game wardens, county game commission and their employes are gathering spawn, or about to gather spawn or catch fish for that purpose, in any such stream or river or body of water: Provided, This does not apply to log or shingle bolts for commercial purposes. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. The state game wardens, or the county game commission, may institute a civil action in the name of the state of Washington to recover from any person or persons obstructing them in the performance of their duties, or who shall place such debris in such stream to the damages resulting therefrom, in addition thereto may in such action enjoin such party or parties from doing the acts prohibited.

207 §205. Oath. §19. The state game wardens, the county game commission, county game warden and any deputy game warden is hereby authorized to administer oaths, and may require any statement to them or him in applications for licenses, or in any report submitted to them or him in any manner connected with the discharge of their duties, to be made under oath. Any person failing or refusing to make any such statement under oath or falsely making an oath shall be guilty of a misdemeanor.

207 §207. Resisting Commission and Wardens—Penalty. §20. Any person who shall resist or obstruct the state game wardens, the county game commission, county game warden or deputy game wardens, or other peace officers of this state, in the discharge of their duties while enforcing the game laws, shall be guilty of a gross misdemeanor.

207 §209. Game Property of State. §21. No person shall at any time or in any manner acquire any property in, or subject to his dominion or control, any of the game birds, game animals, or game fish, or any parts thereof, of the game birds, game animals or game fish herein mentioned, but they shall always and under all circumstances be and remain the property of the state; except, that by killing, catching or taking the same in the manner and for the purposes herein authorized, and during the periods when the killing is not herein prohibited, the same may be used by any person at the time, in

the manner and for the purposes herein expressly authorized; and whenever any person kills, catches, injures, takes, ships, or has in his possession, or under control, any of the game birds, game animals, or game fish, or any parts thereof, mentioned in this chapter, at a time or in a manner prohibited by this chapter, such person shall thereby forfeit and lose all right to the use and possession of such game bird, game animal, or game fish, or any parts thereof, and the state shall be entitled to the sole possession thereof; Provided, That the state wardens, or the game commission of each county shall grant permission to persons to have in their possession and allow the sale and shipping of game birds or game animals for propagation only. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

207 §211. **Nests and Eggs.** §22. No person shall at any time take or have in his possession or under control, break or destroy or in any manner interfere with any nest, or the eggs of the kinds of birds the killing of which is at any or all times prohibited. Any person guilty of violating this section shall be guilty of a misdemeanor.

207 §213. **Hunting Deer with Dogs.** §23. Any person who shall at any time shoot or kill in any manner a deer when such deer is in any river or lake, or body of salt water, or shall hunt or chase deer with dogs, shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished as hereinafter provided.

207 §215. **Trap or Insnare.** §24. It shall be unlawful at any time to set, lay, prepare, or have in his possession, any trap, snare, artificial light, net, bird line, swivel gun or set gun or any contrivances whatever for the purpose of catching, taking or killing any of the game animals or game birds in this state, except that decoys and blinds may be used in hunting wild ducks, geese or brant. Any person violating any of this section shall be guilty of a misdemeanor.

207 §217. **Grouse, Pheasant, Quail, Etc.** §25. Every person who shall, within the State of Washington, hunt, pursue, take, kill, injure, destroy or possess any ruffed grouse, Hungarian partridge, prairie chicken, sage hen, Chinese, English, Golden, Mongolian, silver, black neck or Japanese pheasants, or any species of quail or any species of imported upland game birds, between the 1st day of December and the 1st day of October of the following year, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided: Provided, That it shall be unlawful for any person to pursue, take, or kill in the State of Washington, any Hungarian partridge prior to the 1st day of October, 1920: And provided further, That in all counties of the State of Washington lying east of the western boundary of the counties of Okanogan, Chelan, Kittitas, Yakima and Klickitat, it shall be unlawful to hunt, pursue, take, kill, injure, destroy or possess any Chinese, native pheasant, prairie chicken, or turtle dove, between the 1st day of November and the 15th day of September of the following year: And it is further provided, That it shall be unlawful to kill or have in possession any quail between the last day of November and the first day of October of the following year: And provided further, That it shall be unlawful to kill or have in possession any blue grouse between the first day of December and the first day of September of the following year; Provided further, That in all counties except Spokane county lying east of the western boundary of the counties of Okanogan, Chelan, Kitsap [Kittitas], Yakima and Klickitat it shall be unlawful to hunt, pursue or kill, or have in possession any species of quail until the first day of October, 1915; Provided, further, That in the counties of Kittitas and Yakima it shall be unlawful to kill or have in possession any western prairie chicken, eastern prairie chicken, native pheasant, Hungarian partridge, bob white quail, California valley quail, scaley partridge or sage hen until the first day of October, 1915; Provided, That in the counties of Kittitas and Yakima it shall be lawful to hunt, take, pursue, kill or have in possession, California mountain quail during the month of September of any year: Provided further, That in the counties of Kittitas and Yakima it shall be unlawful to hunt, take, pursue, kill or have in possession Chinese pheasants except from the first day of October to the 15th day of October of any year:

Provided further, That in the counties of Kittitas and Yakima it shall be unlawful to kill or have in possession any native pheasant or ruffed grouse until the first day of October, 1915: Provided, That in all the counties lying east of the western boundary of Okanogan, Chelan, Kittitas, Yakima and Klickitat it shall be unlawful to hunt, take, pursue, or kill or have in possession any blue grouse between the first day of December and the first day of September of any year: Provided, That in the county of Asotin it shall be unlawful to hunt, kill or have in possession any Chinese pheasants until October 1st, 1915: Provided, That in the county of Okanogan it shall be unlawful to hunt, pursue, take, kill, injure or destroy any species of partridge, sage hen, quail or any imported game bird, until the first day of October, 1915; Provided, however, That in all counties of the state lying west of the summit of the Cascade Mountains blue grouse may be killed during the last fifteen days of the month of September. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor: And provided further, That it shall be unlawful after the passage of this act for any person to take or kill within the State of Washington any sage grouse, commonly known as sage hen; any band-tailed pigeon, commonly known as wild pigeon, or any wood duck (*aix sponsa*); and in the counties of Whatcom, Skagit, Snohomish, King, Pierce, San Juan and Island, to take any ruffed grouse, commonly known as native pheasant.

217 §219. **Bag Limit.** §26. Every person who shall, during the season when it is lawful to hunt the same, kill more than five prairie chickens, grouse, partridge, Hungarian partridge, native pheasant, Chinese, English, golden, Mongolian, silver, blackneck or Japanese pheasant, or more than 10 quail or any or all kinds in any one day, shall be guilty of a misdemeanor: Provided, That no person shall in any one day kill more than five of the game birds mentioned in this section, it being the intention thereof to limit the bags of one day to five birds, no matter how many varieties of these protected upland birds are included in the bag: Provided further, That 10 quail may be killed in one day during the season when it is lawful to hunt the same, but the limit of upland game birds, if quail are included in the same for one day, shall never exceed ten upland birds, but in no event more than five of the above-named birds other than quail and the limit of the bag for one week shall never exceed twenty-five upland birds. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

207 §221. **Ducks, Geese and Brant.** §27. Every person who shall, within the State of Washington, hunt, pursue, take, kill, injure, destroy or possess any goose, brant, mallard duck, canvassback duck, widgeon, spoon bill, gray duck, sprig tail, or any game duck, whether mentioned or named herein, or any snipe, curlew, plover, rail, or any surf or shore game birds, between the first day of February and the first day of October of the same year, shall be guilty of a misdemeanor: Provided, That in the counties of Okanogan, Ferry, Stevens, Douglas, Grant, Lincoln, Spokane, Adams and Whitman, it shall be unlawful to kill geese, brant, or any species of game duck and curlew, plover, rail or any species of surf or shore game birds between the 1st day of February and the 15th day of September of the same year: Provided, That it shall be unlawful to kill or have in possession at any time any species of swan. Any person violating the provisions of this section shall be guilty of a misdemeanor.

207 §223. **Bag Limit.** §28. Every person who shall, in the State of Washington during the season when it is lawful to hunt the same, kill more than twenty (20) ducks, geese, or brant, in any one week, shall be guilty of a misdemeanor, it being the intention hereof to limit bags in any one week to twenty of the above mentioned birds, no matter how many varieties of those birds are included in said bag; and for the purposes of this act the week shall be deemed to begin at midnight on Wednesday night, and any person violating the provisions of this act shall be guilty of a misdemeanor.

207 §225. **Possession Limited.** §29. Every person, company, club, partnership, firm or corporation, boarding house keeper, hotel keeper, restaurant keeper, market keeper or cold storage plant, their owners, proprietors, officers, managers, agents or servants, who shall offer for sale or for market, or barter for,

or exchange or keep in their possession any time of the year, any deer, moose, caribou, antelope, mountain sheep or mountain goat of any kind, or the various kinds of quail or the various kinds of Chinese, English or Mongolian pheasants, grouse, native pheasants, ptarmigan, partridge, Hungarian partridge, prairie chicken, sage hen or any kind of wild duck, goose, brant, rail, plover or game shore birds, or any portion of the meats of said animals or birds, shall be guilty of a misdemeanor. Possession by the above named persons or corporations of any of the animals or game birds mentioned or named herein or any of the meats of the same shall be presumptive evidence that said animals or birds or the meats of the same was unlawfully taken by the person having possession of the same, and upon conviction thereof shall be punished as hereinafter provided: Provided, That any person may have in his possession, or in cold storage, for his own use only the number and kind of animals and birds permitted to be taken by this act, during the time when the same may be taken, provided the same were taken by the person so having them in his possession or obtained by gift for his use only, or otherwise taken as provided in the previous section of this act. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

207 §227. **Sale of Game.** §30. It shall be unlawful for any person at any time to sell or offer for sale any of the game birds, game animals or song birds protected by the laws of the State of Washington. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

207 §229. **Other States—Game Unlawful.** §31. Every person who shall at any time have in his possession or under control within this state any game birds, game animals or game fish, or any part thereof, which has been caught, taken or killed outside of this state at a time when it is unlawful to have in possession or under control such game birds, game animals or game fish, or parts thereof, if caught, taken or killed in this state, or which have been unlawfully taken or killed outside of this state or unlawfully shipped therefrom into this state shall be guilty of a misdemeanor.

207 §231. **Possession Unlawful.** §32. It shall be unlawful to have in possession or under control by any person, any game birds, game animals or game fish or any parts thereof, the killing of which is at any time prohibited; the same shall be prima facie evidence that it was the property of this state at the time it was caught, taken or killed, and that it was caught, taken or killed in this state when the killing, taking or possession thereof is by this chapter declared to be unlawful, that such taking or killing occurred during the closed season. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

207 §233. **Deer, Elk, Moose, Mountain Goat and Mountain Sheep.** §33. No person shall, within the State of Washington, hunt, catch, take, kill, ship, convey or cause to be shipped or transported by common or private carrier, to any person, either within or without the state, purchase, expose for sale, have in possession with intent to sell, sell to any person or have in possession or under control at any time, any elk, moose, caribou, deer, fawn, mountain sheep or mountain goat, or any part thereof, including the hides, horns or hoofs except as herein provided: Provided, That deer, mountain sheep and mountain goat may be killed between October 1st and December 1st of the same year, and any deer, mountain goat and mountain sheep, or any part thereof, may be had in possession by any person during the said time, but no person shall kill or have in possession during said time more than two deer, nor more than one mountain goat or mountain sheep, or parts thereof: Provided, That in the county of Okanogan every person who shall at any time between the first day of November and the first day of September of the following year hunt, pursue, take, kill, injure, destroy or possess any deer, shall be guilty of a misdemeanor: And provided further, That every person who shall within the county of Okanogan during the season when it is lawful to kill the same, take or kill, more than one deer, or shall kill any female deer, or spotted fawn, shall be guilty of a misdemeanor: And provided further, That any person who is lawfully in possession of any deer, mountain goat or mountain sheep, or any part thereof, may ship, or cause to be shipped in the

manner provided for by this chapter, but not otherwise. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor: And provided further, That after the year 1925 male antlered moose and elk may be killed between October 1st and 15th of the same year, and any such male elk or moose or part thereof may be had in possession by any person during the time aforesaid, but no person shall kill or have in possession during said time more than one male antlered elk or moose or part thereof: And provided further, That when any deer, mountain goat, mountain sheep or any parts thereof are lawfully in possession of any person as provided for in this chapter such person may continue in the possession of the same for five days after the time herein limited for the killing of said animal: And provided further, That no cow, female elk or moose can be killed or had in possession at any time. Any person violating any of the provisions of this section shall be deemed guilty of a gross misdemeanor.

207 §235. State and County Game Funds. §34. There is hereby established a fund to be known as the state game fund which shall consist of all moneys received for state hunting and game fish licenses, and all such other sums as the legislature may from time to time appropriate and set aside for the purposes provided for in this act. Said state game fund shall also consist of ten per cent. of all moneys received by the county officers for county hunting and game fish licenses, and from fines and costs which shall be paid into the state treasury, and constitute a part of said state game fund, said payments to be made quarterly on the last day of each quarter of the year, beginning on the first day of March. Such state game fund shall be used for the payment of the salaries and expenses of the state game wardens provided for by this act, and their necessary traveling and office expenses, and for propagation, protection, introduction, purchase and distribution of any game, animals, birds or fishes. Ninety per cent. of all moneys received in any county from the sale of county hunting and game fish licenses, and from fines and costs, shall be expended in the said county from which the same are collected, and shall be so spent in the payment of salaries and expenses of the county game wardens or special deputies appointed in said county by the county game commission, and for the protection, introduction, propagation and purchase of animals, birds and game fishes in said county, and in the enforcement of the game and game fish laws within said county from which said moneys are received. All payments made under the provisions of this act shall be made by warrant in the usual manner, and shall be audited by the state and county officers in the same manner as other claims against the State of Washington and the various counties are audited.

207 §237. Licenses. §35. It shall be unlawful for any person to hunt, pursue, catch, kill or take any of the game animals, game birds or game fish protected by the laws of this state during the season when it is lawful to hunt, pursue, take or kill the same without such person having procured before the time of such hunting, pursuing, catching or killing, a hunting or fishing license therefor duly issued to him by the county or state authorities.

The licenses provided for in this act shall be issued by the county auditors of the respective counties, and shall be as follows:

(a) A resident of this state may obtain a hunting and fishing license by paying the county auditor the sum of one dollar (\$1.00) which shall entitle the holder thereof to hunt or fish within the county where such license is issued until the first day of March next following the date of its issuance, at any time when it is otherwise lawful to hunt or fish.

(b) Any person who is a resident of this state may obtain from any county auditor a state hunting and fishing license by the payment of five dollars (\$5.00), which license shall entitle the holder thereof to hunt and fish in any part of the state until the first day of March next following the date of its issuance, whenever it is otherwise lawful to hunt or fish within said state.

(c) A non-resident of the State of Washington may obtain a hunting and fishing license by paying to the county auditor the sum of ten dollars (\$10.00), which shall entitle the holder thereof to hunt and fish in any county in the state up to and including the first day of March next following the date of its issuance, when it would otherwise be lawful to hunt or fish in said county.

(d) Provided, however, That a county fishing license shall entitle the holder thereof to fish on either side of any stream or river, when the said stream or river shall constitute the boundary between two counties.

(e) The county auditor shall, upon application and the payment of two dollars (\$2.00), issue to any non-resident of this state a license to take, catch, or kill any game fish in any lawful manner within the county where the license is issued, whenever it is lawful to take, kill or catch any game fish.

(f) Licenses issued under the provisions of this act shall be non-transferable, and any person hunting or fishing shall, upon demand of any warden, or deputy warden, exhibit his license, and a failure or refusal to exhibit such license shall be prima facie evidence that such person has no license.

(g) Any person hunting or fishing without having obtained the license herein provided for, or doing any other act which by this act is declared to be unlawful, in cases where no other specific penalty is provided, shall be guilty of a misdemeanor.

(h) Provided, however, That nothing in this act shall prevent any woman, or minor, under the age of sixteen (16) years, who is an actual resident of this state, from fishing at any time when it is otherwise lawful to fish.

207 §239. **Applications for License.** §36. In applying for any license under this act the applicant shall make a written application which shall describe the applicant as to age, weight, height and complexion, and the license issued shall contain the said description as contained in said application, and in all cases other than that of a non-resident the application shall be accompanied by a statement to the effect that he is a resident of the State of Washington, his place of residence, and any person who falsely states that he is a resident of the State of Washington when he is not such, shall be guilty of a misdemeanor.

207 §241. **Sale Prohibited.** §37. Any person who takes or kills or has in his possession with intent to sell, sells, offers or exposes for sale, ships by common carrier, conveys or causes to be conveyed, has in his possession with intent to ship, or to convey in any manner to any point within or without the state, any game animals, game birds or game fish, or any part thereof, including the hides and horns, or any person who buys any such game animals, game birds or game fishes or part thereof in violation of any of the provisions of this chapter, or any common carrier or agent thereof, who ships or aids or abets in shipping any such game animals, game birds or game fish or any part thereof, or have possession of same with intent to ship or transport or convey to any point either within or without the state, shall be guilty of a gross misdemeanor.

207 §243. **Artificial Lights.** §38. Any person who hunts for any of the protected game animals, game birds or game fishes with a jack light or other artificial light of any class, kind or description shall be guilty of a misdemeanor.

207 §245. **Export or Import.** §39. Every steamboat company, railroad company, express company or common carrier, their officers, agents and servants and every other person who shall transfer or carry from one point to another within the state or take out of the state, or who shall receive for the purpose of transferring from this state any of the wild game birds, game animals, game or game fish enumerated in this act shall be guilty of a misdemeanor: Provided, That nothing in this section shall be construed to prevent any steamboat company, express company, railroad or other common carrier, their officers, agents and servants from receiving any of the game birds, game animals or game fishes enumerated in this act from transferring them from one point to another point within this state when said game birds, game animals or game fish are accompanied by an affidavit in duplicate by the shipper, that the same is not shipped for sale or profit; said affidavit may be furnished if necessary at destination. Such affidavit shall describe said game animals, game birds and game fish and shall be attached to said shipment while in transit from one point to another or furnished at its destination and the duplicate must be sent to the game commission or game warden of said county. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

207 §247. **Beavers.** §40. No person shall in any manner hunt for, trap, take, catch or kill any beaver in this state, or have in his possession alive or dead any beaver or any part thereof. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

207 §249. **Game Fish.** §41. No person shall catch, take, kill or have in his possession or have under control for any purpose whatever except as hereinafter provided, any of the game fish hereinafter mentioned within the periods mentioned, to-wit: Any variety of trout except Dolly Varden or bull trout or any variety of pike, between the 31st day of December and 1st day of May following or any black, grey or Oseego bass, croppie, perch, bullhead, or sunfish between the first day of May and the 15th of July of the same year. Any person violating the provisions of this section shall be guilty of a misdemeanor.

207 §251. **Limit of Catch.** §42. No person shall catch, take, kill or have in his possession more than fifty game fish in any one day, nor more than twenty pounds and one game fish in any one day, nor more than thirty pounds and one game fish in any one calendar week, nor in any other manner than by angling for them with hook and line held in the hand or attached to a rod so held, and no person shall have in his possession any game fish caught, taken or killed in any of the waters of this state except as provided in this chapter. Any person violating this section shall be guilty of a misdemeanor.

207 §253. **Private Fish Hatcheries.** §43. No person shall have in his possession for sale or with intent to sell, expose or offer for sale or sell to any person, any trout or other game fish at any time, or ship or cause to be shipped or have in possession with intent to ship to any person either within or without the state any such game fish, or have any such game fish in his possession during the season for taking the same: Provided, That nothing in this act shall be construed to be in conflict with the provisions of (191 §§39-61) sections 5171-5182 inclusive of Remington & Ballinger's Annotated Codes and Statutes of Washington. Any person violating this section shall be guilty of a misdemeanor.

207 §255. **Size of Trout.** §44. No person shall at any time catch, take, kill, or have in his possession or under his control any trout or bass of any variety whatever which are less than six inches in length. Any person catching such game fish shall at once return the same to the water from whence they are taken with as little injury as possible. Any person violating the provisions of this section shall be guilty of a misdemeanor.

207 §257. **Non-Resident, Possession of.** §45 No person shall ship, have in his possession with intent to ship or cause to be shipped beyond the borders of this state any fish of the kind mentioned in this chapter: Provided further, That any non-resident of this state who is desirous of taking any fish beyond its boundaries for his personal use may carry with him on the same train or conveyance not to exceed fifty fish nor more than twenty pounds and one fish caught by him: Provided further, That all boxes, bags or packages of any description used in shipping or taking game fish out of the state shall be plainly marked with the name and address of the consignor and consignee, and with the description and contents of the package. Any person who violates this section shall be guilty of a misdemeanor.

207 §259. **Devices—Public Nuisances.** §46. Nets of any description being used in any of the fresh waters of this state above tide water are hereby declared and are a public nuisance, and it shall be the duty of all county game commissioners, game wardens and their deputies, police officers and constables without warrant or process, to take, seize, abet and destroy any and all of the same. And any person using same shall be guilty of a misdemeanor. The game wardens and their deputies, sheriffs and their deputies, police officers and constables shall seize any and all nets and seines when illegally used and all game fish taken therewith and at once report the seizure to the county game commission or game warden. Every person using, aiding or abetting the use of any such nets or other devices contrary to the provisions of this section shall be guilty of a misdemeanor.

207 §261. **Fish Ways and Dams.** §47. No person shall catch, take or kill

in any stream within four hundred feet of any fish way or dam or have in his possession or under his control any game fish so caught, taken or killed. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor.

207 §263. **Explosives, Etc.** §48. No person shall lay, set, use or prepare any drug, poison, lime, medicated bait, nets, fish berries, dynamite or other explosive or any other deleterious substance whatever, or lay, stretch or place any tip-up, snare or net or trot line, or any wire string, rope or cable of any kind, class or description in any of the waters of this state with intent thereby to catch, take or kill any game fish. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

207 §265. **Providing Fish Ways.** §49. Any person owning, erecting, managing or controlling any dam or other obstruction across any river, creek or stream within the state or forming the boundary lines of this state, shall construct in connection with such dam, durable fishways, in such manner and in such shape and size that the free passage of all game fish inhabiting such waters shall not be obstructed. Such fishway shall be maintained in good condition and kept in good repair by the person so owning, controlling, managing, operating or using such dam or obstruction. If any person fails to construct or keep in good repair, durable and efficient fishways, as herein provided for within a period of ten days after notice, the county game commission may construct or repair the same and the cost thereof may be recovered from the owner or any persons managing or being in control thereof in a civil action brought in the name of the State of Washington. Any moneys so received shall be credited to the game protection fund. All fishways heretofore or hereafter erected in any dam or obstruction across any of the streams of this state shall at all times be under the supervision of the county game commission. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor.

207 §267. **Casting Sawdust in Rivers or Streams.** §50. Every person who shall cast or discharge or permit to be cast or discharged into any waters of this state any sawdust, planer shavings, or other lumber waste, shall be guilty of a misdemeanor.

207 §269. **Defining Offenses.** §51. The killing of every single bird, animal or fish protected by the laws of this state shall constitute a separate offense.

207 §271. **Attempted Violations.** §52. Any attempt to violate any of the provisions of any section of this chapter shall be deemed a violation of such provision, and any person attempting to violate any of the provisions of this chapter shall be guilty of a misdemeanor, unless otherwise designated as a gross misdemeanor.

207 §273. **Repealing and Saving Clause.** §53. Sections 5323 (207 §11), 5327 (207 §65), 5328 (207 §67), 5333 (207 §143), 5337 (207 §155), 5354, 5356 (207 §§25, 105), 5361 (207 §47), 5362 (207 §49), 5363 (207 §51), 5364 (207 §53), 5365 (207 §55), 5367 (207 §59), 5371 (207 §133), 5372 (207 §115), 5379 (191 §161), 5380 (191 §135), 5384 (191 §175), 5385 (191 §177) and 5389 (191 §163), (of Pierce's 1912) and Remington & Ballinger's Annotated Codes and Statutes of Washington, and all other acts or parts of acts inconsistent with the provisions of this chapter are hereby repealed: Provided, If any section of this act should be declared unconstitutional it shall not affect any other section or part of section thereof.

223 §9.

An execution sale cannot be had upon a judgment entered upon unsecured promissory notes, where prior to issuance of execution, a declaration of homestead had been filed, although judgment was entered prior to filing declaration, Snelling v. Butler, 66 W. 165.

223 §17.

No appraisal necessary if no homestead in existence, Scott v. Guiberson, 71 or 72 W.

223 §59.

Declaration filed prior to execution is in time, Kenyon v. Erskine, 69 W. 110.

231 §1 passim §125.

Repealed 9 §117 Supp.

TITLE 241—INITIATIVE AND REFERENDUM.

AN ACT to facilitate the operation of the provisions of section 1 of article II of the constitution relating to the initiative and referendum, to prevent fraud, providing penalties for violations thereof, and declaring that this act shall take effect immediately. Approved March 21, 1913. Laws '13 ch. 138.

241 §1. Initiative and Referendum—Petition. §1. That whenever any legal voter or committee or organization of legal voters of the state shall desire to propose any measure to be submitted to the legislature, or to the people upon initiative petition, or shall desire to order by petition the referendum of any act, bill or law, or any part thereof, passed by the legislature, he or they shall file in the office of the secretary of state five printed or typewritten copies of the proposed measure or of the act or part thereof on which a referendum is desired, accompanied by the name and postoffice address of the person, committee or organization proposing the same, and the affidavit of such person, or the affidavit of some member of such committee or organization that such person is, or the members of such committee or organization, are legal voters. Measures to be submitted upon initiative petition shall be filed within ten months prior to the election or the session of the legislature at which they are to be submitted. The secretary of state shall give to each such measure a serial number, using a separate series for initiative and referendum measures, respectively, and forthwith transmit to the attorney general a copy of such measure bearing its serial number, and thereafter such measure shall be known and designated in all petitions, ballots and proceedings as "Initiative Measure No.....," or "Referendum Measure No.....," as the case may be.

241 §1. is personal to signer, State ex Hindley v. Court, 70 W. 352.
Right to withdraw name from petition

241 §3. Ballot Title. §2. Within ten days after the receipt of any such measure the attorney general shall formulate therefor and transmit to the secretary of state a ballot title of not to exceed one hundred words, bearing the serial number of such measure, which ballot title may be distinct from the legislative title of such measure, and shall express, and give a true and impartial statement of the purpose of such measure, and shall not be intentionally an argument, or likely to create prejudice, either for or against the measure. Such ballot title formulated by the attorney general shall be the ballot title of such measure unless changed on appeal as hereinafter provided.

241 §5. Revision of. §3. Upon the filing of such ballot title in his office, the secretary of state shall forthwith notify the persons proposing the measure by telegraph and by mail of the exact language thereof. In case such persons are dissatisfied with said ballot title they may at any time within ten days from the filing thereof in the office of the secretary of state appeal from the decision of the attorney general to the superior court of Thurston county by petition setting forth the measure, the title formulated by the attorney general and their objections thereto, and praying for amendment thereof. A copy of said petition together with a notice that an appeal has been taken shall be served upon the secretary of state and upon the attorney general. Upon the filing of such petition on appeal the court shall forthwith, or at such time to which the hearing may be adjourned by consent of the appellants, examine the proposed measure, the title prepared by the attorney general and the objections thereto and may hear argument thereon, and shall as soon as possible render its decision and certify to and file with the secretary of state such ballot title as it shall determine will meet the requirements of this act. The decision of the superior court shall be final, and the

title so certified shall be the established ballot title. Such appeal shall be heard without costs to either party.

241 §7. **Petitions with Ballot Title.** §4. When the ballot title shall have been finally established, the secretary of state shall file the instrument establishing it with the proposed measure and transmit a copy thereof by mail to the persons proposing the measure. Thereafter such ballot title shall be the title of the measure in all petitions, ballots and other proceedings, if any, in relation thereto. Upon the ballot title being established, the persons proposing the measure may prepare and cause to be printed upon single sheets of white paper of good quality twelve inches in width and fourteen inches in length, with a margin of one and three-quarters inches at the top for binding, blank petitions for proposing measures for submission to the legislature or to the people, or for ordering legislative enactments to be referred to the people, as the case may be.

241 §9. **Form of Petition to Legislature.** §5. Petitions for proposing measures for submission to the legislature at its next regular session, to be filed with the secretary of state not less than ten days before such regular session, shall be substantially in the following form:

WARNING.

Every person who shall sign this petition with any other than his true name, or who shall knowingly sign more than one of these petitions, or who shall sign this petition when he is not a legal voter, or who shall make herein any false statement, shall be punished by fine or imprisonment or both.

INITIATIVE PETITION FOR SUBMISSION TO THE LEGISLATURE.

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens of the State of Washington and legal voters of the respective precincts set opposite our names, respectfully direct that this petition and that certain proposed measure known as Initiative Measure No., and entitled (here set forth the established ballot title of the measure), a full, true and correct copy of which is hereto attached, shall be transmitted to the legislature of the State of Washington at its next ensuing regular session, and we hereby respectfully petition the legislature to enact said proposed measure into law; and each of us for himself says: I have personally signed this petition; I am a legal voter of the State of Washington in the precinct, city (or town), and county written after my name, and my residence address is correctly stated.

Petitioner's Signature.	Residence Ad- dress. Street and Number, if any.	Precinct Name or Number.	Ward Number.	City or Town.	County.
(Here follow 20 numbered lines divided into columns as below.)					
1.
2.
3.
etc.					

I, the undersigned, hereby certify that I am the officer of the city (town or precinct) of.....county of.....State of Washington, having the custody of the registration books containing the signatures, addresses and precincts of the registered legal voters of said city (town or precinct); that I have carefully compared the signatures on the foregoing petitions with said registration books, and the signatures on the petition opposite which I have written my initials are the signatures of legal voters of the State of Washington.

Dated the.....day of....., 19.....
.....of the city (town or precinct) of.....
(Seal) By.....Deputy.

241 §11. **Form of Petition to the People.** §6. Petitions for proposing measures for submission to the people for their approval or rejection at the

next ensuing general election, to be filed with the secretary of state not less than four months before such general election, shall be substantially in the following form:

WARNING.

(Same form as in §5.)

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE.

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens of the State of Washington and legal voters of the respective precincts set opposite our names, respectfully direct that that certain proposed measure known as Initiative Measure No., entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is hereto attached shall be submitted to the legal voters of the State of Washington for their approval or rejection at the general election to be held on the.....day of....., A. D. 19.....; and each of us for himself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the precinct, city (or town), and county written after my name, and my residence address is correctly stated.

(Followed by the same form of blanks and certificate as in §5.)

241 §13. Form of Referendum. §7. Petitions ordering that bills or parts of bills passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, to be filed with the secretary of state within ninety days after the final adjournment of the session of the legislature at which such bill was passed, shall be substantially in the following form:

WARNING.

(Same form as in §5.)

PETITION FOR REFERENDUM.

To the Honorable....., Secretary of State of the State of Washington:

We, the undersigned citizens of the State of Washington and legal voters of the respective precincts set opposite our names, respectfully order and direct that Referendum Measure No., entitled (here insert the established ballot title of the measure) being a (or part or parts of a) bill passed by the.....th legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be held on the..... day of.....A. D. 19.....; and each of us for himself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the precinct, city (or town), and county written after my name, and my residence address is correctly stated.

(Followed by the same form of blanks and certificate as in §5.)

241 §15. Form of Certificate Where No Registration. §8. Blank petitions for circulation in precincts where registration of voters is not required shall bear certificates, in lieu of those contained in the foregoing forms, to be signed by a justice of the peace, road supervisor, member of a school board or a postmaster, to the effect that he resides in the precinct, naming it, and is acquainted with the legal voters thereof and that he believes the signatures opposite which he has written his initials are the signatures of legal voters of such precinct.

241. §17. Size of Petitions. §9. Each initiative or referendum petition for circulation and signing shall at the time of signing, certifying and filing with the secretary of state, as hereinafter in this act provided, consist of not more than five sheets with numbered lines for not more than twenty signatures on each sheet, with the prescribed warning, title and form of petition on each sheet, but with the prescribed form of certificate only on the last sheet, and a full, true and correct copy of the proposed measure referred to

therein printed on sheets of paper of like size and quality as the petition, firmly fastened together.

241 §19. **Checking Petitions.** §10. Every initiative and referendum petition, before it is filed with the secretary of state as hereinafter provided, shall be filed with the officer having custody of the registration books containing the signatures, addresses and precincts of the registered voters of the city, town or precinct, as the case may be, where the persons who have signed such petition claim to be legal voters. Upon the filing of any such petition it shall be the duty of such officer to forthwith compare or cause a deputy to compare the signatures, addresses and precinct numbers on such petition with said registration books. The officer or deputy making the comparison shall place his initials in ink opposite the signature of those persons who are shown by the registration books to be legal voters, and shall certify upon the last signature sheet of such petition that the signatures so initialed are the signatures of legal voters of the State of Washington, and shall sign such certificate and attach thereto the seal of the registration officer, if such officer have a seal, and return such petition to the person filing the same upon demand. The omission to fill any blank shall not prevent the initialing or certification of any name, if sufficient information is given to enable the officer, by a comparison of the signatures, to identify the voter. Every such petition bearing the signatures of persons residing in precincts where registration of voters is not required, before it is filed with the secretary of state, shall be submitted to and initialed and certified by a justice of the peace, road supervisor, member of a school board or a postmaster residing in such precinct in the form provided in section 8 of this act. It shall be the duty of such justice of the peace, road supervisor or member of a school board to examine and initial and certify the signatures of legal voters on any such petition upon demand.

241 §21. **Voters and Data Required Before Filing.** §11. When the person, committee or organization proposing any such initiative measure or demanding any such referendum shall have secured upon any such initiative petition the signatures of fifty thousand legal voters or the signatures of legal voters equal in number to or exceeding ten per centum of the whole number of electors who voted for governor at the regular gubernatorial election last preceding, or shall have secured upon any such referendum petition the signatures of thirty thousand legal voters, or the signatures of legal voters equal in number to or exceeding six per centum of the whole number of electors who voted for governor at the regular gubernatorial election last preceding, he or they may submit said petition to the secretary of state for filing in his office. At the time of submitting such petition the person, committee or organization submitting the same shall file with the secretary of state a full, true and detailed statement giving the names and post office addresses of all persons, corporations and organizations who have contributed any moneys to aid in the preparation, publication and advertising of the measure and the preparation, circulation and filing of the petition, with the amount contributed by each, and a full, true and detailed statement of all expenditures, giving the amounts expended, the purpose for which expended, and the names and post office addresses of the persons and corporations to whom paid, which statement shall be verified by the affidavit of the person or some member of the committee or organization in charge of the measure, and until such statement is filed the secretary of state shall refuse to receive such petition.

241 §23. **Filing or Rejection by Secretary of State.** §12. The secretary of state upon any such petition being submitted to him for filing shall examine the same, and if upon examination said petition appear to be in proper form and to bear the requisite number of signatures of legal voters, and if said petition be an initiative petition proposing a measure to be submitted to the legislature at its next ensuing regular session and is submitted for filing not less than ten days before such regular session, or if said petition be an initiative petition proposing a measure to be submitted to the people for their approval or rejection at the next ensuing general election and is submitted for filing not less than four months before such general election,

or if said petition be a referendum petition ordering and directing that the whole or some part or parts of a bill passed by the legislature be referred to the people for their approval or rejection at the next ensuing general election or a special election ordered by the legislature, and such petition is submitted for filing not more than ninety days after the final adjournment of the session of the legislature which passed the bill, the secretary of state shall accept and file said petition in his office; otherwise, he shall refuse to file the same, but shall stamp on said petitions the word "submitted" and the date of submission, and shall retain said petitions pending appeal.

241 §25. Review by Court. §13. If the secretary of state shall refuse to file any such initiative or referendum petition when submitted to him for filing, the persons submitting the same for filing may, within ten days after such refusal, apply to the superior court of Thurston county for a citation requiring the secretary of state to bring such petitions before the court, and for a writ of mandate to compel him to file the same. Such application shall take precedence over other cases and matters and shall be speedily heard and determined. If the court shall issue citation, and upon final hearing shall determine that the petitions are legal in form and apparently contain the requisite number of signatures and were submitted for filing within the time prescribed in the constitution, it shall issue its mandate requiring the same to be filed in his office by the secretary of state as of the date of submission for filing. The decision of the superior court granting a writ of mandate shall be final and no appeal shall be allowed from the decision of the superior court refusing to grant a writ of mandate, but such decision may be reviewed by the supreme court on a writ of certiorari sued out within five days after the decision of the superior court, and such review shall be considered an emergency matter of public concern, and shall be heard and determined with all convenient speed, and if the supreme court shall decide that the petitions are legal in form and apparently contain the requisite number of signatures of legal voters, and were filed within the time prescribed in the constitution, it shall issue its mandate direct to the secretary of state, requiring that said petitions be filed in his office as of the date of submission. In case no appeal is taken from the refusal of the secretary of state to file said petitions within the time prescribed, or in case an appeal is taken and the secretary of state is not required to file said petitions by the mandate of either the superior or the supreme court, the secretary of state shall destroy said petitions.

241 §27. Filing by Secretary of State. §14. If the secretary of state accept and file any such initiative or referendum petition upon its being submitted for filing or if he be required to file the same by the court he shall forthwith, in the presence of the governor, or, if the governor be absent, in the presence of some other state officer and in the presence of the persons submitting such petition for filing, if such persons desire to be present, detach the sheets containing the signatures and certificates and cause them all to be firmly attached to one or more printed copies of the proposed initiative or referendum measure in such volumes as will be most convenient for canvassing and filing, and shall number such volumes and file the same and stamp on each thereof the date of filing.

241 §29. Canvass of Petition. §15. Upon filing such volumes of an initiative petition proposing a measure for submission to the legislature at its next regular session, the secretary of state shall forthwith in the presence of at least one person representing the advocates and one person representing the opponents of the proposed measure, should either desire to be present, proceed to canvass and count the names of certified legal voters on such petition. If he find the same name signed to more than one petition he shall reject both names from the count. If, at the conclusion of the canvass and count, it shall appear that such petition bears the requisite number of names of certified legal voters, the secretary of state shall transmit a certified copy of such proposed measure to the legislature at the opening of its session together with a certificate of the facts relating to the filing of such petition and the canvass thereof.

241 §31. Record of Fraudulent Names. §16. The secretary of state shall,

while making said canvass, keep a record of all names appearing on said petition which are not certified to be legal voters and of all names appearing more than once on said petition, and shall report the same to the prosecuting attorneys of the respective counties where such names were signed to the end that prosecutions may be had for violations of this act.

241 §33. **Review of Canvass.** §17. Any citizen who shall be dissatisfied with the determination of the secretary of state that the petition contains or does not contain the requisite number of signatures of legal voters may, within five days after such determination, apply to the superior court of Thurston county for a citation requiring the secretary of state to submit said petitions to said court for examination, and for a writ of mandatae compelling the certification of the measure and petition, or for an injunction to prevent the certification thereof to the legislature, as the case may be, which application and all proceedings had thereunder shall take precedence over other cases and shall be speedily heard and determined. No appeal shall be allowed from the decision of the superior court granting or refusing to grant the writ of mandate or injunction, but such decision may be reviewed by the supreme court on a writ of certiorari sued out within five days after the decision of the superior court, and if the supreme court shall decide that a writ of mandate or injunction, as the case may be, should issue, it shall issue such writ direct to the secretary of state; otherwise, it shall dismiss the proceedings, and the clerk of the supreme court shall forthwith notify the secretary of state of the decision of the supreme court.

241 §35. **Canvass of Referendum.** §18. When the petition filed shall be a referendum petition or an initiative petition for submission of a measure to the people the secretary of state shall canvass and count the names on such petition within thirty days after filing and like proceedings shall and may be had thereon as provided in sections 15, 16, and 17.

241 §37. **Certificate to County Auditors.** §19. If such referendum or such initiative petition for submission to the people shall be found sufficient, the secretary of state shall at the time and in the manner he certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures to be voted upon at the next ensuing general election or special election ordered by the legislature.

241 §39. **Bills Referred by Legislature.** §20. Whenever any bill passed by the legislature shall be by the legislature referred to the people for their approval or rejection at the next ensuing general election or at a special election ordered by the legislature, the secretary of state shall give such bill a serial number, using a separate series, such series being designated "Referendum Bills," and if the legislature shall not have prescribed a ballot title shall obtain from the attorney general a ballot title therefor in the manner provided in this act for obtaining ballot titles for initiative measures, and shall certify the serial number and ballot title of such bill to the county auditors for printing on the ballots for such general or special election in like manner as initiative measures for submission to the people are certified.

241 §41. **Measures Not Acted On by Legislature.** §21. Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature or the legislature shall take no action thereon before the end of the regular session at which it is submitted, the secretary of state shall certify the serial number and ballot title thereof to the county auditors for printing on the ballots at the next ensuing general election in like manner as initiative measures for submission to the people are certified.

241 §43. **Alternative Measures by Legislature.** §22. Whenever any measure proposed by initiative petition for submission to the legislature is rejected by the legislature and the legislature proposes a different measure dealing with the same subject, the secretary of state shall give such different measure the same serial number as that borne by the initiative measure followed by the letter "B," and such measure proposed by the legislature shall be designated as "Alternative Measure No.....B," and the secretary of state shall obtain from the attorney general a ballot title therefor in the manner provided in this act for obtaining ballot titles for initiative measures, and shall

certify the alternative serial number and ballot title of such alternative measure to the county auditors for printing on the ballots for the election at which such measures are to be submitted to the people, in like manner as initiative measures for submission to the people are certified. The ballot title for such alternative measure shall be different from the ballot title of the initiative measure in lieu of which it is proposed, and shall indicate as clearly as possible the essential differences in the measure.

241 §45. **Ballots.** §23. It shall be the duty of the several county auditors to cause to be printed on the official ballots for the election at which initiative and referendum measures are to be submitted to the people for their approval or rejection the serial numbers and ballot titles, certified by the secretary of state, under separate headings in the order of the serial numbers. Measures proposed for submission to the people by initiative petition shall be under the heading, "Proposed by Initiative Petition;" bills passed by the legislature and ordered referred to the people by referendum petition shall be under the heading, "Passed by the Legislature and Ordered Referred by Petition;" bills passed and referred to the people by the legislature shall be under the heading, "Proposed to the People by the Legislature;" measures proposed to the legislature and rejected or not acted upon shall be under the heading, "Proposed to the Legislature and Referred to the People;" measures proposed to the legislature and alternative measures passed by the legislature in lieu thereof shall be under the heading, "Initiated by Petition and Alternative by Legislature."

241 §47. **Marking Ballots.** §24. Except as in the next succeeding section provided, each measure submitted to the people for approval or rejection shall be so printed on the ballot, under the proper heading, that a voter can by making one cross (x) express his approval or rejection of such measure. Substantially the following form shall be a compliance with this section:

PROPOSED BY INITIATIVE PETITION

Initiative Measure No. 22, entitled (here insert the ballot title of the measure).

FOR Initiative Measure No. 22.....☐
 AGAINST Initiative Measure No. 22.....☐

241 §49. **Ballots for Alternative Measures.** §25. In all cases where initiative measures proposed to the legislature have been rejected by the legislature and alternative measures passed by the legislature in lieu thereof the serial numbers and ballot titles of both such measures shall be so printed on the official ballots that a voter can express separately by making one cross (x) for each, two preferences: first, as between either measure and neither, and secondly, as between one and the other, as provided in the constitution. Substantially the following form shall be a compliance with the constitutional provision:

INITIATIVE BY PETITION AND ALTERNATIVE BY LEGISLATURE

Initiative Measure No. 25, entitled (here insert the ballot title of the Initiative measure).

Alternative Measure No. 25B, entitled (here insert the ballot title of the alternative measure).

Vote FOR EITHER, or AGAINST BOTH

FOR EITHER Initiative No. 25 OR Alternative No. 25B.....☐
 AGAINST Initiative No. 25 AND Alternative No. 25B.....☐

and vote FOR one.

FOR Initiative Measure No. 25.....☐
 FOR Alternative Measure No. 25B.....☐

241 §51. **Arguments for and Against Measures.** §26. The person, persons, committee or organization filing any initiative or referendum petition proposing a measure, or ordering a referendum for submission to the people, and any other citizen or committee or organization of citizens shall have the right at the time of filing such petition or within ten days after such petition has

been accepted and filed, to file with the secretary of state for printing and distribution arguments advocating the proposed measure or referendum, and any citizen or committee or organization of citizens may, within twenty days after such petition has been accepted and filed, file an argument in opposition to such measure or referendum for printing and distribution, provided, that not more than two separate arguments advocating such measure or referendum and not more than three separate arguments in opposition thereto shall be printed by and distributed at the expense of the state. If more than two arguments advocating or more than three arguments in opposition to such measure or referendum are filed, the secretary of state shall forthwith notify the persons filing the arguments advocating or in opposition to such measure or referendum of that fact, and if the persons filing such arguments do not agree among themselves within thirty days after the acceptance and filing of such petition as to which of said arguments shall be printed by the state, the secretary of state shall select for printing, binding and distribution, in addition to the argument advocating such measure filed by the persons proposing the same, one additional argument, and shall select three arguments in opposition to such measure, to be printed by the state. In making such selections the secretary of state shall select the argument advocating and the three arguments in opposition to the measure which he shall consider the strongest, taking into account the arguments proposed and the form in which they are presented. If in the opinion of the secretary of state any argument for or against a measure offered for filing contain any obscene, vulgar, profane, scandalous, libelous, defamatory or treasonable matter or any language tending to provoke crime or a breach of the peace, or any language or matter the circulation of which through the mails is prohibited by any act of congress, the secretary of state shall refuse to file such argument: Provided, That the person submitting such argument for filing may appeal to a board of censors consisting of the governor, the attorney general and the superintendent of public instruction, and the decision of a majority of such board shall be final. Each such argument either for or against the measure shall not exceed two pages of the pamphlet hereinafter required to be published by the state and shall contain the serial designation and number of the measure and state the name of the person or organization advancing it. The person or organization filing such argument shall at the time of filing the same deposit with the secretary of state sufficient money, the amount to be estimated by the secretary of state, to cover the increased cost of paper for the printing and binding of such argument. In the case of measures initiated by petition and submitted to the legislature and alternatives passed by the legislature in lieu thereof, the person, committee or organization proposing the measure may likewise within ten days after the filing of the petition, or within ten days after the final passage of the alternative measure, file an argument in support of the initiative measure, and other citizens may file arguments in support thereof within ten days after the final passage of the alternative measure, and the legislature may by resolution file an argument in support of the alternative measure, and other citizens may file arguments in support thereof. But only two arguments in support of each measure, in addition to the argument filed by the proponents of the measure, and by the legislature, shall be printed by and distributed at the expense of the state, and if the persons filing arguments do not agree among themselves as to what arguments shall be printed the secretary of state shall select arguments to be printed. Arguments for and against bills passed and referred to the people by the legislature, including amendments to the constitution proposed by the legislature, shall be filed, selected and printed in the same manner.

241 §53. **Printing and Distribution of Measures and Arguments.** §27. At least sixty days prior to any election at which any initiative or referendum measure is to be submitted to the people, the secretary of state shall cause to be printed in pamphlet form a true copy of the serial designation and number, the ballot title, the legislative title, the full text of and the argument for and arguments against each such measure, including amendments to the constitution proposed by the legislature, to be submitted to the people in the

foregoing order, and shall cause all of such measures to be printed and bound in a single pamphlet in the following order: first, those "Proposed by Initiative Petition;" second, those "Proposed to the People by the Legislature;" third, those "Proposed to the Legislature and Referred to the People;" fourth, those "Initiated by Petition and Alternative by the Legislature," and fifth, "Amendments to the Constitution Proposed by the Legislature." The pages of such pamphlet shall be not larger than five and three-fourths by eight and three-fourths inches in size, and the outside measurement of the printed matter of each page shall be not less than four and one-half by seven and one-third inches including running head, and shall be printed in eight-point Roman-faced type, set solid in two columns, each thirteen ems pica to the line, separated by a pica slug, with appropriate headings. Said pamphlet shall be printed on No. 1 print paper weighing thirty-two pounds to the ream of sheets twenty-four by thirty-six inches. The cost of printing and binding such pamphlets shall be paid from the money appropriated for printing for the secretary of state; Provided, The increased cost of printing and binding such arguments shall be paid from the moneys deposited to cover the same and the balance of any such moneys, if any, and the moneys deposited for arguments not printed shall be returned to the persons depositing it respectively. Such number of pamphlets shall be printed as shall fill the requirements as to distribution hereinafter provided. It shall be the duty of the secretary of state to publish in such pamphlets a table of contents and a brief alphabetical index of subjects.

241 §55. **Mailing Lists.** §28. Not more than four nor less than three months before any election at which initiative or referendum measures are to be submitted to the people, the officer having custody of the registration books in each city, town or precinct where registration of voters is required shall prepare and transmit to the secretary of state type-written lists of the names and addresses of the legal voters of such city, town or precinct, as shown by the registration books, and the county auditors of each county shall prepare and transmit to the secretary of state type-written lists of the names and postoffice addresses of the legal voters in each precinct in said county where registration of voters is not required, as shown by the poll books of the last preceding general election. The secretary of state shall notify such officers of the dates of such elections.

241 §57. **Mailing and Distribution.** §29. Not less than fifty-five days before any election at which initiative or referendum measures are to be submitted to the people, the secretary of state shall transmit, by mail with postage fully prepaid, to every voter in the state whose address he has, or can with reasonable diligence ascertain, one copy of the pamphlet hereinabove provided for, and shall transmit by the least expensive means copies of such pamphlet as follows: to each county auditor three copies for each voting precinct in the county; to the libraries of each educational, charitable, penal and reformatory institution of the state three copies; to each state officer and member of a state board and to each county officer two copies; to each judge of the supreme and superior courts two copies; to the state library five copies; to each public library in the state two copies; to each member of the legislature two copies; and shall reserve for distribution on request such number of copies as he shall deem necessary. The cost of mailing or shipping said pamphlets shall be paid from the money appropriated for postage for the secretary of state. It shall be the duty of the county auditors of the several counties to transmit the copies of the pamphlets so furnished them to the election officers of the respective precincts, to be kept at the polling place throughout election day for the information of voters.

241 §59. **Return and Canvass of Votes.** §30. The votes on the initiative and referendum measures submitted to the people, as in this act provided, shall be counted, canvassed and returned by the regular precinct election officers, and by the county auditors, in the manner provided by law for canvassing and returning votes for candidates for state offices. It shall be the duty of the secretary of state, in the presence of the governor, within thirty days after any such election to canvass the votes for each measure and certify to the governor the result thereof, and the governor shall forthwith issue his

proclamation giving the whole number of votes cast in the state for and against such measure, and declaring such measures as are approved by the majority of those voting thereupon, provided that the vote cast upon such measure shall equal one-third of the total vote cast at such election, to be the law of the State of Washington from the date of such proclamation.

241 §63. **Official, Etc., Misconduct—Penalty.** §32. Every officer who shall or referendum petition provided for in this act with any other than his true name shall be guilty of a felony. Every person who shall knowingly sign more than one of such petitions for the same measure or who shall sign any such petition knowing that he is not a legal voter or who shall make on any such petition any false statement as to his place of residence, and every registration officer who shall make any false report or certificate on any such petition shall be guilty of a gross misdemeanor.

241. §65. **Official, Etc., Misconduct—Penalty.** 32. Every officer who shall wilfully violate any of the provisions of this act, for the violation of which no penalty is herein prescribed, or who shall wilfully fail to comply with the provisions of this act; and every person who shall for any consideration, compensation, gratuity, reward or thing of value or promise thereof sign or decline to sign any initiative or referendum petition; or who shall advertise in any newspaper, magazine or other periodical publication or in any book, pamphlet, circular or letter or by means of any sign, signboard, bill, poster, handbill or card or in any manner whatsoever, that he will either for or without compensation or consideration circulate, or solicit, procure or obtain signatures upon, or influence or induce or attempt to influence or induce persons to sign or not to sign any initiative or referendum petition or vote for or against any initiative or referendum measure; or who shall for pay or any consideration, compensation, gratuity, reward or thing of value or promise thereof, circulate, or solicit, procure or obtain or attempt to procure or obtain signatures upon any initiative or referendum petition; or who shall pay or offer or promise to pay, or give or offer or promise to give any consideration, compensation, gratuity, reward or thing of value to any person to induce him to sign or not to sign, or to circulate, or solicit, procure or attempt to procure or obtain signatures upon any initiative or referendum petition or to vote for or against any initiative or referendum measure; or who shall by any other corrupt means or practice or by threats or intimidation interfere with or attempt to interfere with the right of any legal voter to sign or not to sign any initiative or referendum petition or to vote for or against any initiative or referendum measure; or who shall receive, accept, handle, distribute, pay out or give away either directly or indirectly any money, consideration, compensation, gratuity, reward or thing of value contributed by or received from any person, firm, association or corporation having his, their or its residence or principal office outside of the State of Washington, or corporation the majority of whose stockholders are non-residents of the State of Washington, for any service, work or assistance of any kind done or rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or the adoption or rejection of any initiative or referendum measure, shall be guilty of a gross misdemeanor.

TITLE 255—INSURANCE.

255 §53.

cretionary in Commissioner under former
Papers for publication of statement dis- law, *State ex Cowles v. Schively*, 63 W. 103.

255 §157. **Existing Companies Continue.** §79. Every domestic insurance company previously organized, and licensed to transact insurance business in this state at the time this act goes into effect, is hereby recognized as an existing company, and shall have the right to continue such business under the provisions of this act: Provided, That such company whose capital does not meet the requirements of this act shall have four years from the first day of January, nineteen hundred and twelve, in which to conform to the requirements of this act relating thereto. L. 13 ch. 109.

255 §165. **Insurance Classified.** §83. All insurance business in this state is hereby classified as follows:

(1) Fire and marine insurance, upon buildings and other property against loss or damage by fire, lightning, wind storms, cyclones, tornadoes, hail, or earthquakes, water from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, and water pipes; and against accidental injury to such sprinklers, pumps or other apparatus; and against loss or damage arising from the prevention or suspension of rent or use and occupation of any building, plant or manufacturing establishment due to the hazard or peril insured against; and upon vessels, boats, cargoes, goods, merchandise, freight and other property against loss or damage by the risks of lake, river, canal and inland transportation and navigation, including insurance upon automobiles, whether stationary or being operated under their own power, and reinsurance of any risks taken in this class; but not upon ocean marine risks, and other casualty insurance risks.

(2) Marine insurance, being ocean and inland risks, transportation and automobiles, but not including any other casualty insurance as hereinafter provided.

(3) Life insurance, being [including] endowments and annuities, but not including health, or accident or sickness insurance or any other casualty insurance as hereinafter provided.

(4) Accident insurance, and either sickness or health insurance being insurance against injury, disablement, or death resulting from travel or general accident, and against disablement resulting from sickness; and every insurance appertaining thereto.

(5) Fidelity and surety insurance, being the guaranteeing of persons holding the places of public or private trust; guaranteeing the performance of contracts other than insurance policies; or guaranteeing and executing all bonds, undertakings and contracts of suretyship.

(6) Liability insurance, being all insurance against loss or damage resulting from accident to or injury, fatal or non-fatal, suffered by an employe or other person and for which the insurer is liable.

(7) Plate glass insurance, being all insurance against breakage of glass, whether local or in transit.

(8) Boiler and machinery insurance, being insurance upon steam boilers and upon pipes, engines and machinery connected therewith and operated thereby, against explosion and accident, and against loss or damage to life, person or property, resulting therefrom.

(9) Burglary insurance, being insurance against loss by burglary, house breaking or theft.

(10) Sprinkler insurance, being insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers or water pipes.

(11) Credit insurance, being insurance, or guaranty either by agreement to purchase incollectible debts, or otherwise to insure against loss or damage from the failure of persons indebted or to become indebted to the insured, or to meet existing or contemplated liabilities.

(12) Title insurance, insuring or guaranteeing owners of property or others interested therein, against loss by encumbrance, or defective titles, or adverse claim to title, either together with or without examination of title or furnishing information relative thereto.

(13) Team and vehicle insurance, being insurance against loss, damage or legal liability for loss, because of damage to property or persons caused by the use of teams or vehicles operated by power not generated in or upon the vehicle, whether by accident or collision, and including insurance against theft of the whole or any part of any vehicle. The term vehicle, as herein used, includes elevators and bicycles.

(13½) Motor vehicle insurance, being insurance on motor vehicles operated by power generated within or withon such vehicles, except those operating on water or on rails, against loss or damage or loss of use of or to the vehicle, furnishings, tools, appliances and equipment: or legal liability for loss or damage to persons or property resulting through the operation of the

vehicle; caused by fire, self ignition and explosion, theft, collision, or other insurable hazards, including all hazards incident to transporting such vehicle by land or by water.

(14) Miscellaneous insurance, being insurance upon any risk not included within or under either of the foregoing classes, and which is a proper subject of insurance, not prohibited by law or contrary to sound public policy. L. 13 ch. 109.

255 §165.

ance, although it may have done so prior
An existing company is not permitted to the passage of act, State ex rel. North
to make both fire and plate glass insur- Coast Fire Ins. Co. v. Schively, 68 W. 148.

255 §167. Companies Classified. §84. Any insurance company having the required amount of capital, or assets, when permitted by its articles of incorporation or charter, may be authorized and licensed by the commissioner to make insurance in this state under one or more of the classes prescribed in the several paragraphs in section eighty-three of this act, as follows:

Fire and Inland Marine. (1) No stock company shall make insurance in this state under class one of section eighty-three of this act, without having capital stock of at least two hundred thousand dollars, of which not less than one-half must be paid in in cash or like securities authorized by this act, and the remainder, in cash or like securities, paid within one year after the company is incorporated, and a surplus of not less than fifty thousand dollars, nor shall such company make insurance in this state, in any other of said classes of insurance specified in said section, except in classes two, seven, ten and thirteen and one-half; and is not to make insurance in class two or thirteen and one-half without having additional capital of at least one hundred thousand dollars for each of said classes, and is not to make insurance in classes seven, ten and thirteen and one-half (excepting against the hazard of injury to persons) in addition to class one without having additional capital of at least fifty thousand dollars; or in addition to classes one and two without having a capital stock of at least three hundred and fifty thousand dollars.

Marine. (2) No stock insurance company shall make insurance in this state under class two of section eighty-three without having a capital stock of at least one hundred thousand dollars fully paid and a surplus of not less than fifty thousand dollars, nor shall such company make insurance in this state in any other of said classes of insurance excepting in classes one and thirteen and one-half (excepting against the hazard of injury to persons); nor make insurance in class one without having additional capital of at least one hundred thousand dollars; nor make insurance in class thirteen and one-half (excepting against the hazard of injury to persons) in addition to class two without having additional capital of at least fifty thousand dollars, nor in addition to classes one and two without having a capital stock of at least three hundred and fifty thousand dollars.

Life. (3) No stock insurance company shall make insurance in this state under class three of section eighty-three without having a capital stock fully paid of at least one hundred thousand dollars with a surplus of not less than fifty thousand dollars, nor shall such company make insurance in this state in any other of said classes of insurance except in classes four and six; nor to make insurance in class four without having additional capital of at least fifty thousand dollars; nor to make insurance in class six without having additional capital of at least two hundred thousand dollars; nor to make insurance in classes four and six without having additional capital of at least two hundred and fifty thousand dollars.

255 §167 subd. 3.

life and indemnity insurance, State ex rel.
A foreign company cannot transact both Aetna Life Ins. Co. v. Schively, 68 W. 503.

Title. (4) No company shall issue contracts of guaranty or title insurance in this state, under class twelve of section eighty-three, until and unless it deposit and maintain on deposit through the office of the insurance commissioner, with the state treasurer, a guaranty fund in securities authorized by this act as legal investments for the capital or funds of insurance companies, in amounts as follows: (a) In counties having a population of five hundred

thousand or more as evidenced by the last official census of the United States or of the State of Washington, the guaranty fund shall be not less than two hundred thousand dollars; (b) In counties having a population of not less than three hundred thousand nor more than five hundred thousand as evidenced by said census, the guaranty fund shall not be less than one hundred and fifty thousand dollars; (c) In counties having a population of not less than one hundred and fifty thousand nor more than three hundred thousand, as evidenced by said census, the guaranty fund shall not be less than one hundred thousand dollars; (d) In counties having a population of not less than one hundred thousand nor more than one hundred and fifty thousand, as evidenced by said census, the guaranty fund shall be not less than seventy-five thousand dollars; (e) In counties having a population of not less than sixty thousand nor more than one hundred thousand, as evidenced by said census, the guaranty fund shall be not less than fifty thousand dollars; (f) In counties having a population of not less than thirty-five thousand nor more than sixty thousand, as evidenced by said census, the guaranty fund shall be not less than twenty-five thousand dollars; (g) In counties having a population of not less than fifteen thousand nor more than thirty-five thousand, as evidenced by said census, the guaranty fund shall be not less than fifteen thousand dollars; (h) And in counties having a population of less than fifteen thousand, as evidenced by said census, the guaranty fund shall be not less than ten thousand dollars. Any company authorized to issue contracts of guaranty, or title insurance in any county of this state shall be permitted and authorized to issue contracts of guaranty and title insurance in one or more other counties of this state: Provided, Its guaranty fund on deposit with the state treasurer is equal to the maximum amount hereinbefore required of a company issuing contracts of guaranty or title insurance in any of such counties; Provided further, If any company shall have complied or shall thereafter comply with the provisions of this act for the county in which it has its principal place of business no other company authorized to issue contracts of guaranty or title insurance in any other county of this state shall be permitted to issue contracts of guaranty or title insurance therein after the expiration of its certificate of authority then held unless it has deposited or shall thereafter deposit with the state treasurer through the office of the insurance commissioner securities in addition to those then required of such company in the same amount as required for such county: Provided further, That when any company authorized to issue contracts of guaranty or title insurance in any county of the state shall have and maintain on deposit with the state treasurer a guaranty fund in securities authorized by this act in the total amount of two hundred thousand dollars, such company shall be permitted and authorized to issue contracts of guaranty and title insurance in all of the counties of this state: Provided further, That nothing herein contained shall prevent any company authorized to issue contracts of guaranty or title insurance in any county of this state from underwriting or re-insuring in whole or in part contracts of guaranty or title insurance by any other company. The provisions of this act shall in no wise be interpreted to apply to persons, copartnerships, or corporations engaged in the business of preparing and issuing abstracts of, but not guaranteeing or insuring, title to property and certifying to the correctness thereof.

Fidelity. (5) No stock insurance company shall make insurance in this state under class five of section eighty-three without having a capital stock fully paid of at least two hundred thousand dollars and a surplus of not less than one hundred thousand dollars, nor shall such company make insurance in this state in any other of said classes of insurance specified in section eighty-three, excepting classes four, six, seven, eight, nine, ten, eleven, thirteen, thirteen and one-half, and fourteen; and it shall not make insurance in classes six or thirteen and one-half without having additional capital of at least one hundred thousand dollars for each of said classes; such company may make insurance in classes seven, eight, nine, ten, eleven, thirteen, thirteen and one-half (excepting against the perils of fire), and fourteen when it has additional capital of at least fifty thousand dollars.

Liability. (6) No stock insurance company shall make insurance in this state under class six of section eighty-three without having a capital stock of at least two hundred thousand dollars fully paid and a surplus of not less than one hundred thousand dollars; nor shall such company make insurance in this state in any other of said classes of insurance, specified in this section except in classes four, five, seven, eight, nine, ten, eleven, thirteen, thirteen and one-half and fourteen; and it shall not make insurance in classes five or thirteen and one-half without having additional capital of at least one hundred thousand dollars for each of said classes. Such company may make insurance in one or all of the following classes: four, seven, eight, nine, ten, eleven, thirteen, thirteen and one-half (excepting against the perils of fire), or fourteen when it has additional capital of at least fifty thousand dollars.

Motor Vehicle. (6½.) No stock insurance company shall make insurance in this state under class thirteen and one-half of section eighty-three without having a capital stock of at least two hundred thousand dollars fully paid and a surplus of not less than one hundred thousand dollars.

All others. (7.) No stock insurance company shall make insurance in this state in either of the following classes specified in section eighty-three: four, seven, eight, nine, ten, eleven, thirteen and fourteen, without having a capital stock of at least one-hundred thousand dollars fully paid and a surplus of not less than twenty-five thousand dollars, nor shall such company make insurance in more than one of said classes unless it shall have additional capital of not less than fifty thousand dollars: Provided, however, That the requirement of a surplus as provided in this section shall only apply to domestic insurance companies organizing and commencing to transact the business of making insurance and that such companies may use such surplus in establishing the company in business without impairment of the company.

Mutual and Fraternal Excepted. (8) The provisions of this section shall not apply to life or fire insurance companies operating on the mutual, or assessment, or fraternal plan. L. '13, ch. 109.

255 §167.

Foreign company cannot do double business, *State ex Aetna Co. v. Schively*, 68 W. 503.

255 §369.

Policy chiefly accident will be accounted so, *Pride v. Continental Cas. Co.*, 69 W. 428.

Supplementary—AN ACT relating to the payments by the state, counties, cities and towns of premiums or charges for surety bonds given by elective or appointive officers thereof, and amending section 194 of chapter 49, Session Laws of 1911, and validating certain payments heretofore made.

Approved March 11, 1913. Laws '13, ch. 49.

255 §389. Premium Paid by Counties—Costs. §194. Any receiver, assignee, trustee, guardian, executor, administrator, committee, or other fiduciary, required by law to give bonds as such, may include as a part of his lawful expenses, such reasonable sum paid to such a corporation for such suretyship not exceeding one per cent per annum on the amount of said bond, as the head of the department, court, judge or officer by whom, or the court or body by which he was appointed, allows, and in all actions and proceedings, the party entitled to recover costs may include therein such reasonable sum as may have been paid such company for executing or guaranteeing any such bond or undertaking therein as may be allowed by the court or judge before whom the action or proceeding is pending: Provided, That the premium or charge for bonds given by surety companies for appointive or elective officers of the state, counties and cities of the first, second and third class and towns shall be paid by the state, county, city or town respectively: Provided further, That no such premium or charge shall exceed one-half of one per cent. per annum on the amount of such bond, and validating such payments heretofore made.

259 §1.

Repealed 9 §117 Supp.

263 §3.

Contract to stay mortgage foreclosure held usurious, *Knight v. Am. Inv. & Imp. Co.*, 73 W.

Option contract held usurious, *Lay v. Bouton*, 73 W.

263 §11.

A divorce decree awarding a wife a stated sum as her share of the property is a judgment and draws interest from date, *Smith v. Smith*, 63 W. 288.

263 §13.

Defense of usury is not available against a holder acquiring notes before maturity in good faith for value, *American Bank v. Helgesen*, 64 W. 54.

TITLE 267—INTOXICATING LIQUORS.

267 §1.

Both state and municipal licenses collectible, *State v. Falkenstine*, 64 W. 432.

267 §17.

Both state and municipal licenses collectible, *State v. Falkenstine*, 64 W. 432.

267 §29.

Act constitutional, *State v. Miller*, 72 W.

Applies to druggists, wholesalers and manufacturers as well as to retail dealers, *State v. Robinson*, 67 W. 425.

Relates to but one subject sufficiently expressed in its title, *State v. Jones*, 66 W. 229.

Lessee of saloon premises liable for rent though town goes "dry," *Hayton v. Seattle B. & M. Co.*, 66 W. 248.

267 §31.

A special election upon the local option question cannot be held after the general election in November, 1910, except biennially on the general election day, *State ex rel. Eckdahl v. Dykeman*, 65 W. 580.

267 §33.

A general election of city officers is a "general election," *State ex rel. Forgues v. Court*, 70 W. 670.

Signatures to a local option petition in a third class city, that do not state the street of residence, must be excluded in determining the sufficiency of the petition, *State ex rel. Czerny v. Court*, 70 W. 592.

A local option petition in a town with no numbered houses and but one precinct is sufficient where the signer's addresses are given as simply the name of the town, *State ex rel. Quillen v. Court*, 70 W. 343.

"General election" may be either state, county or city election, *State ex rel. Griffin v. Court*, 70 W. 545.

267 §39.

The clerk's certificate is sufficient prima facie evidence that local option was in force in the precinct, *State v. Polk*, 66 W. 411.

267 §45.

Prohibits giving away liquor on street of dry town, *State v. Jones*, 66 W. 229.

267 §51.

Applies to all persons who solicit orders in dry territory, *State v. Holmes*, 68 W. 7.

Is not in violation of the commerce clause of the U. S. constitution, *State v. Holmes*, 68 W. 7.

267 §53.

Double conviction under this section and 267 §103, *State v. Hatch*, 73 W.

267 §63.

"Unbroken package" is one in the original form in which it was made by the shipper for delivery, providing it is one ordinarily used by honest dealers, *State v. Maire*, 66 W. 591.

Does not permit a brewery to make delivery at its plant to a buyer of an unbroken package consisting of 24 quarts of bottled beer, *State v. Bellingham Bay Brewery*, 70 W. 650.

Does not permit a manufacturer in a dry district to sell his product in that district, *State v. Bellingham Bay Brewery*, 70 W. 654.

267 §67.

A certificate under seal, from the U. S. internal revenue collector that a special stamp tax had been issued to defendant is admissible although not a certified copy, *State v. Baker*, 67 W. 595.

267 §71.

Supreme court has no power to review decision of a superior court in a local option election contest upon the merits, *State ex rel. McCallum v. Court*, 72 W.

267 §93.

Injunction denied landlord against saloon since he could prevent license, *Burns v. Dufresne*, 67 W. 158.

267 §97.

A bank may not loan money to a retail liquor dealer to pay his license, on the security of a wholesale dealer, *Lewer v. Cornelius*, 72 W.

267 §103.

Double conviction under this section and 267 §53, *State v. Hatch*, 73 W.

TITLE 271—IRRIGATION.

271 §1.

Title sufficient, *Sorenson v. Kittitas Rec-*

lamation Dist., 70 W. 528.

271 §3. Petition—Election. §2. For the purpose of organizing an irrigation district, a petition, signed by the required number of holders of title or evidence of title to land within the proposed district, shall be presented to the board of county commissioners of the county in which the lands, or the

greater portion thereof, are situated, which petition shall set forth and particularly describe the proposed boundaries of such district, and shall pray that the territory embraced within the boundaries of such proposed district may be organized as an irrigation district. The petition must be accompanied by a good and sufficient bond, to be approved by the board of county commissioners, in double the amount of the probable cost of organizing the district, and conditioned that the bondsmen will pay all of the costs in case such organization shall not be effected. Said petition shall be presented at a regular meeting of the said board, or at any special meeting ordered to consider and act upon said petition, and shall be published once a week, for at least two weeks before the time at which the same is to be presented, in some newspaper of general circulation printed and published in the county where said petition is to be presented, together with a notice by the petitioners stating the time of the meeting at which the same will be presented; and if any portion of the lands within said proposed district lie within another county or counties, then said petition and notice shall be published for the time above provided in one newspaper printed and published in each of said counties. When the petition is presented, the board of county commissioners shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing may make such changes in the proposed boundaries as it may find to be proper and just, and shall establish and define the boundaries of the district: Provided, That said board shall not modify the boundaries so as to except from the operation of this chapter any territory within the boundaries of the district proposed by said petitioners, which is susceptible of irrigation by the same system of works applicable to other lands in such proposed district; nor shall any lands which, in the judgment of said board, will not be benefited by irrigation by said system, or have a sufficient water supply for irrigation from some other source, be included within such district: And provided further, That any owner, whose lands are susceptible of irrigation from the same source, and in the judgment of the board it is practicable to irrigate the same by the proposed district system, shall, upon application to the board at the time of the hearing, be entitled to have such lands included in the district. The board of county commissioners shall, as soon as it has established the boundaries of said proposed district, enter an order establishing and defining such boundaries, and ordering that three directors for such district be elected from the district at large, and designating a name for the proposed district, and calling an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act, and for the purpose of electing three directors at large. The clerk of the board of county commissioners shall then give notice of the election ordered to be held as aforesaid, which notice shall describe the district boundaries as established, and shall give the name by which said proposed district has been designated, and shall state the purposes and objects of said election, and shall be published once a week, for at least two weeks prior to said election, in a newspaper of general circulation published in the county where the petition aforesaid was presented; and if any portion of said proposed district lie within another county or counties, then said notice shall be published in a like manner in a newspaper within each of said counties. Said election notice shall also require the electors to cast ballots which shall contain the words "Irrigation District—Yes," or "Irrigation District—No," and also the names of persons to be voted for as directors of the district. R&B §6417; L. '13, ch. 165.

271 §5. Conduct of Election. §3. For the purpose of the election above provided for, the board of county commissioners must establish a convenient number of election precincts in the proposed district and define the boundaries thereof, and designate a polling place for, and appoint the necessary election officers for each of said precincts, but said precincts may thereafter be changed by the board of directors of said district. Such election shall be conducted as nearly as may be practicable in the manner provided in the election of directors for the district.

The board of county commissioners shall meet on the second Monday next succeeding such election and proceed to canvass the returns of the votes cast

thereat, and if upon such canvass it appears that at least two-thirds of all the votes cast are "Irrigation District—Yes," the board shall, by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the three persons receiving the highest number of votes to be duly elected directors of such district, and shall cause a copy of such order, duly certified, to be filed for record in the office of the county clerk of each county in which any portion of the district may lie. From and after the date of the filing of such order, the organization of the district shall be complete and the directors thereof shall be entitled to enter immediately upon the duties of their office, upon qualifying in accordance with law, and shall hold office until their successors are elected and qualified.

Any person of the age of twenty-one (21) years, being a citizen of the United States and a resident for 90 days of the county in which any of the lands of the district may lie, and who holds title to land or evidence of title to land embraced within the boundaries of any irrigation district, or proposed district in the case of an election for the organization thereof, shall be entitled to vote at any election held therein, called for any purpose. Additional qualifications for voting, required by the general election laws of the state shall not apply, provided there shall be no denial of the right to vote on account of sex. An elector resident within the district shall vote in the precinct in which he resides, and an elector not residing in the district shall vote in the precinct nearest his place of residence. R&B. §6418; Laws '13, Ch. 165.

271 §7. **Annual Election—Oath and Bond of Officers.** §4. There shall be elected in each organized irrigation district of this state, a board of three (3) directors who are electors of the district. An annual election to the office of director shall be held on the first Tuesday of December of each and every year, and the term of each director shall be three years from and after the first Tuesday of January next succeeding his election: Provided, That in the case of the three directors elected at any organization election called by the board of county commissioners, the three directors so elected shall serve until the first Tuesday of January following the first annual election; and at the first annual election there shall be elected three directors, one to serve for a term ending one year from the first Tuesday of January next following such election, and one to serve for a term of two years from the first Tuesday of January next following such election, and one to serve for a term of three years from the first Tuesday of January next following such election; and an election shall be held in each district thereafter on the second Tuesday in December in each year, at which election one director shall be elected for the full term of three years, or until his successor is elected and qualified: And provided further, That in any irrigation district organized and existing under any law of this state prior to the taking effect of this act, the directors elected at the last election held therein shall hold office, and their terms of office, shall be as follows: That one of the three receiving the lowest number of votes at the election last aforesaid, shall hold his office until the first Tuesday of January, 1914, the one receiving the next highest number of votes shall hold his office for one year from and after the first Tuesday of January, 1914, and the one receiving the highest number of votes shall hold his office for a term of two years from and after the first Tuesday of January, 1914; and an election shall be held in each of the districts last aforesaid on the second Tuesday of December of the year 1913, and on the second Tuesday of December in each year thereafter, at which one director shall be elected for the full term of three years, or until his successor is elected and qualified. In case of any vacancy occurring in the office of director, such vacancy shall be filled by appointment by the board of county commissioners of the county in which the proceedings for the organization of the district were had, and the person so appointed shall serve until the next annual election of directors, when an election by the district shall be had to fill the vacancy for the remainder of the unexpired term. Each director shall take and subscribe an official oath for the faithful discharge of the duties of his office, and shall execute an official bond to the district in the sum of twenty-five hundred dollars (\$2,500.00), condi-

tioned for the faithful discharge of the duties of his office, which bond shall be approved by the judge of the superior court of the county where the organization of the district was affected, and said oath and bond shall be recorded in the office of the county clerk of said county and filed with the secretary of the board of directors. The secretary of the district shall take and subscribe a written oath of office and execute an official bond in the sum of not less than twenty-five hundred dollars (\$2,500.00), to be fixed by the board of directors, and which said bond shall be approved and filed as in the case of the bond of a director. R&B §6419; L. 13 ch. 165.

271 §19. **Entry of Returns—Certificate.** §10. The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the district;
2. The name of the persons voted for;
3. The office to fill which each person was voted for;
4. The number of votes given in each precinct to each of such persons;
5. The number of votes given in each precinct for and against any proposition voted upon.

The board of directors must declare elected the person having the highest number of votes given for each office. The secretary must immediately make out, and deliver to such person a certificate of election signed by him and authenticated by the seal of the district. R&B §6425; L. 13 ch. 165.

271 §21. **Organization of Board—Meetings—Quorum—Powers.** §11. The three directors of the district shall constitute the board of directors of such district, and shall elect a president from their number, and appoint a secretary, who shall keep a record of their proceedings. The office of the board and principal place of business of the district shall be at some place in the county in which the organization was effected, to be designated by the board. The board of directors shall hold a regular monthly meeting, at its office, on the first Tuesday in every month, and may adjourn any meeting from time to time as may be required for the proper transaction of business. Special meetings may be called at any time by a majority of the board, but in case the three members of the board do not join in said order, the secretary shall give the number not joining five (5) days' notice of such meeting. The order or notice calling any special meeting shall specify what business shall be transacted, and none other than that specified shall be transacted at such special meeting. All meetings of the board must be public. Two members shall constitute a quorum for the transaction of business, but in all matters requiring action by the board there shall be a concurrence of at least two members of said board. All records of the board shall be open to the inspection of any elector during business hours. The board shall have the power, and it shall be its duty to adopt a seal of the district, to manage and conduct the business and affairs of the district, to make and execute all necessary contracts, to employ and appoint such agents, officers and employees as may be necessary and prescribe their duties, and to establish equitable by-laws, rules and regulations for the government and management of the district, and for the distribution of water to the lands within the district, and generally to perform all such acts as shall be necessary to fully carry out the provisions of this chapter. The by-laws, rules and regulations must be printed in convenient form for distribution in the district. All water distributed for irrigation purposes shall be apportioned ratably to each land owner upon the basis of the ratio which the last assessment of such land owner, for district purposes, within said district, bears to the whole sum assessed upon the district, and any land owner may assign the right to the whole or any portion of waters so apportioned to him for use upon such lands and under such regulations as may be designated and prescribed by the board of directors. All leases, contracts, or other form of holding any interest in any state or other public lands shall be, and the same are hereby, declared to be title to and evidence of title to lands, and all leasehold, contractual or possessory interests in any such state or public lands, situated within the limits of any irrigation district, and held by any person, shall be valued, assessed and equalized in the manner provided for the valuation and

assessment of other property, and shall be charged with their proportional parts of the taxes and assessments of the district, and such leasehold, contractual or possessory interest, for all purposes of the assessment and collection of taxes, shall be treated as the private property of the lessee or owner of the contractual or possessory interest: Provided, That nothing in this section shall be construed to affect the title of the state or other public ownership, nor shall any lien for such assessment attach to the fee simple title of the state or other public ownership. The board of directors shall have power to lease or rent the use of water for delivery to occupants of public lands situated within the district, at such prices and on such terms as it deems best, but the rental shall be as near as practicable the amount of the district tax for which said land would be annually liable if held as private property: Provided, That as soon as any public land situated within the limits of the district shall be acquired by any private person, or held under any title of private ownership, the owner thereof shall be entitled to receive his ratable proportion of water as in case of other land owners, upon payment by him of such sums as shall be determined by the board, and at the time to be fixed by the board, which sum shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. R&B §6426; L. '13, ch. 165.

271 §23. Eminent Domain—Construction Work. §12. The board, and its agents and employes, shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works and the line for any canal or canals and irrigation works, including canals and works constructed lands which may be deemed best for such location. Said board shall also have the power to acquire, either by purchase or condemnation, or other legal means, all lands, waters, water rights, and other property necessary for the construction, use, supply, maintenance, repair and improvements of said canal or canals and irrigation works, including canals and works constructed or being constructed by private owners, or any other person, lands for reservoirs for the storage of needful waters, and all necessary appurtenances. The board may also construct the necessary dams, reservoirs and works for the collection of water for said district, and may enter into contracts for a water supply to be delivered to the canals and works of the district, and do any and every lawful act necessary to be done that sufficient water may be furnished to the lands in the district for irrigation purposes; and may enter into any obligation or contract with the United States for the construction, operation and maintenance of the necessary works for the delivery and distribution of water therefrom under the provisions of the federal reclamation act and all amendments thereof, and the rules and regulations established thereunder, or it may contract with the United States for a water supply under any act of congress providing for and permitting such contract; and in the purchase of any of the property or property rights aforesaid, or in acquiring or contracting for a water supply for the district, the bonds of the district may be used by the board, at not less than ninety per cent. par value, in payment. The use of all water required for the irrigation of the lands, within any district, together with rights-of-way for canals, laterals, ditches, sites for reservoirs and all other property required in fully carrying out the purposes of the organization of the district is hereby declared to be a public use; and in condemnation proceedings to acquire any property or property rights for the use of the district, the board of directors shall proceed in the name of the district, in the manner provided in this state in cases of appropriation of land, real estate and other property by private corporations. R&B §6427; L. 13 ch. 165.

271 §31. Sale of Bonds. §16. The board may sell the bonds of the district from time to time in such quantities as may be necessary and most advantageous to raise money for the construction of such canals and works, the acquisition of said property and property rights, and otherwise to fully carry out the objects and purposes of the district organization, and may sell such

bonds, or any of them, at private sale whenever the board deems it for the best interests of the district so to do. The board of directors shall also have the power to sell said bonds, or any portion thereof, at private sale, and accept in payment therefor labor and material necessary for the construction of its proposed canals or irrigation works, whenever the board deems it for the best interests of the district so to do. If the board shall determine to sell the bonds of the district, or any portion thereof, at public sale, the secretary shall publish a notice of such sale for at least three (3) weeks in such newspaper or newspapers as the board may order. The notice shall state that sealed proposals will be received by the board, at its office, for the purchase of the bonds to be sold, until the day and hour named in the notice. At the time named in the notice, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids. Provided, That such bonds shall not be sold for less than ninety per cent. of their face value. R&B §6431; L. '13 ch. 165.

271 §33. Payment of Bonds. §17. Said bonds and interest thereon shall be paid by revenue derived from an annual assessment upon the real property of the district, and all the real property in the district shall be and remain liable to be assessed for such payments as hereinafter provided. And in addition to this provision and the other provisions herein made for the payment of said bonds and interest thereon as the same may become due, said bonds shall become a lien upon all the water rights and other property acquired by any irrigation district formed under the provisions of this chapter, and upon any canal or canals, ditch or ditches, flumes, feeders, storage reservoirs, machinery and other works and improvements acquired, owned or constructed by said irrigation district, and if default shall be made in the payment of the principal of said bonds or interest thereon, according to the terms thereof, the holder of said bonds, or any part thereof, shall have the right to enter upon and take possession of all the water rights, canals, ditches, flumes, feeders, storage reservoirs, machinery, property and improvements of said irrigation district, and to hold and control the same, and enjoy the rents, issues and profits thereof, until the lien hereby created can be enforced in a civil action in the same manner and under the same proceedings as given in the foreclosure of a mortgage on real estate. This section shall apply to all bonds heretofore issued, or which may hereafter be issued by any district. R&B §6432; L. '13 ch. 165.

271 §35. Assessment of Property. §18. The secretary must, between the first Monday in March and the first Monday in June, in each year, ascertain the value of the land in such district, and the persons who own, claim, and have possession or control thereof, at its cash value, and he must prepare an assessment book, with appropriate headings, in which must be listed all such property within the district. In such book must be specified, in separate columns, under the appropriate headings:

First. The name of the person to whom the property is assessed. If the name is not known to the secretary the property shall be assessed to "unknown owners";

Second. Land by township, range, section or fractional section, and when such land is not a legal subdivision, by metes and bounds or other description sufficient to identify it, giving an estimate of the number of acres;

Third. City and town lots, naming the city or town, and the number and block, according to the system of numbering in such city or town;

Fourth. The cash value of all land, other than city or town lots;

Fifth. The cash value of city and town lots;

Sixth. The total value of all property assessed;

Seventh. The total value of all property after equalization by the board of directors;

Eighth. Such other things as the board of directors may require. Any property which may have escaped the payment of any assessment for any year, shall, in addition to the assessment for the then current year, be assessed for such year with the same effect and with the same penalties as are provided for such current year. R&B §6433; L. '13 ch. 165.

271 §43. Levy of Tax Funds. §22. The board of directors shall then levy an assessment sufficient to raise the ensuing annual interest on the outstand-

ing bonds, and at the expiration of ten years after the issuing of the bonds of any issue, the board must, from year to year, increase said assessment for the ensuing years in an amount sufficient to pay and discharge the outstanding bonds as they mature. The secretary of the board must compute and enter in a separate column of the assessment book the respective sums in dollars and cents to be paid as assessments on property therein enumerated. The assessments, when collected by the county treasurer, shall constitute a special fund to be called the "Bond Fund of.....Irrigation District."

In case of neglect or refusal of the board of directors to cause such assessment or levy to be made as herein provided, then the assessment of property made by the county assessor and the county board of equalization shall be adopted, and shall be the basis of assessments for the district; and the board of county commissioners of the county in which the office of the board of directors is situated shall cause an assessment roll for the said district to be prepared, and shall make the levy required by this chapter in the same manner and with like effect as if the same had been made by said board of directors, and all expenses incident thereto shall be borne by the district. In case of neglect or refusal of the secretary of the district to perform the duties imposed by law, then the treasurer of the county in which the office of the board of directors is situated must perform such duties, and shall be accountable therefor, on his official bond, as in other cases. R&B §6437; L. '13 ch. 165.

271 §45. Tax is Lien. §23. The assessment upon real property shall be a lien against the property assessed, from and after the first Monday in March for any year, which lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except for a lien for prior assessments and for general taxes, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. R&B §6438; L. 13 ch. 165.

271 §47. Collection of Tax. §24. On or before the first day of November the secretary must deliver the assessment book to the county treasurer of the county in which the office of the board of directors is situated, who shall within twenty days publish a notice in a newspaper published in each county in which any portion of the district may lie, that said assessments are due and payable at the office of said county treasurer, and will become delinquent at six o'clock in the afternoon on the 31st day of December next thereafter, and that unless paid prior thereto, five per cent. will be added to the amount thereof. The notice shall be published once a week for four successive weeks, and posted for the same length of time in some public place in said district. The county treasurer must mark the date of payment of any assessment in the assessment book, opposite the name of the person paying, and give a receipt to such person, specifying the amount of the assessment and the amount paid, with the description of the property assessed. On the 31st day of December of each year, all unpaid assessments are delinquent, and thereafter the treasurer must collect thereon for the use of the district an addition of five per cent. The district shall pay to the county from the five per cent, penalties and other costs received by the treasurer in the collection of delinquent taxes, the amounts actually expended by the treasurer in performing the duties of ex-officio collector and treasurer of the district. R&B §6439; L. '13, ch. 165.

271 §49. Delinquent Taxes. §25. On or before the first day of February, the county treasurer must publish the delinquency list, which must contain the names of the persons and a description of the property delinquent, and the amount of the assessments and costs due opposite each name and description. He must append to and publish with the delinquent list a notice that unless the assessments delinquent, together with costs and percentage are paid, the real property upon which such assessments are a lien will be sold at public auction. The publication must be made once a week for three successive weeks, in a newspaper published in each of the counties comprised in the district. The publication must designate the time and place of sale. The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication, and the place must be at some point designated by the treasurer. R&B §6440; L. '13, ch. 165.

271 §51. **Penalty—Sale.** §26. The county treasurer must collect, in addition to the assessment due on the delinquent list, five per cent. of the amount thereof. On the day fixed for the sale, or some subsequent day to which he may have postponed it, of which he must give notice, the county treasurer, between the hours of ten o'clock A. M. and three o'clock P. M. must commence the sale of the property advertised, commencing at the head of the list, and continuing alphabetically or in the numerical order of the lots or blocks, until completed. He may postpone the day of commencing sale, or the sale from day to day, but the sale must be completed within three weeks from the day first fixed. R&B, §6441; L. '13, ch. 165.

271 §53. **Procedure in Sales.** §27. The owner or person in possession of any real estate offered for sale for assessments due thereon may designate in writing to the county treasurer, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the treasurer may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the assessment and cost due, including one dollar to the treasurer for duplicate of certificate of sale, is the purchaser. The treasurer shall account to the district for said one dollar. If the purchaser does not pay the assessment and costs before 10 o'clock A. M. the following day, the property on the next sale day must be resold for the assessments and costs. But in case there is no purchaser in good faith for the same on the first day that the property is offered for sale, then when the property is offered thereafter for sale, and there is no purchaser in good faith for the same, the whole amount of the property assessed shall be struck off to the irrigation district as the purchaser, and the duplicate certificate delivered to the secretary of the district, and filed by him in the office of the district. No charge shall be made for the duplicate certificate where the district is the purchaser, and in such case the treasurer shall make an entry, "Sold to the district," and he will be credited with the amount thereof in settlement. An irrigation district, as a purchaser at such sale, shall be entitled to the same rights as a private purchaser, and the title so acquired by the district, subject to right of redemption herein provided, may be conveyed by deed, executed and acknowledged by the president and secretary of the board: Provided, That authority to so convey must be conferred by resolution of the board, entered on its minutes, fixing the price at which such sale may be made, and such conveyance shall not be made for a less sum than the reasonable market value of such property. After receiving the amount of assessments and costs, the county treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments, giving the amount and year of the assessment and specifying the time when a purchaser will be entitled to a deed. The certificate must be signed by the treasurer and one copy delivered to the purchaser, and the other filed in the office of the county auditor of the county in which the land is situated: Provided, That upon the sale of any lot, parcel or tract of land not larger than an acre, the fee for a duplicate certificate shall be twenty-five cents, and in case of a sale to a person or a district of more than one parcel or tract of land, the several parcels or tracts may be included in one certificate. R&B §6442; L. '13, ch. 165.

271 §55. **Record of Sales—Lien.** §28. The county treasurer, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of the sale, purchasers' names and amount paid, regularly number the description on the margin of the book and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours, when not in actual use. On filing the certificate with such county auditor the lien of the assessments vests in the purchaser and is only divested by the payment to him, or to the county treasurer, for his use, of the purchase money and one per cent per month from the day of sale until redemption. R&B §6443; L. '13 ch. 165.

271 §57. **Redemption—Deed.** §29. A redemption of the property sold may

be made by the owner or any party in interest within twelve months from the date of purchase. Redemption must be made in gold or silver coin, as provided for the collection of state and county taxes, and when made to the treasurer he must credit the amount paid to the person named in the certificate and pay it on demand to the person or his assignee. In each report the treasurer makes to the board of directors he must name the persons entitled to redemption money and the amount due each. On receiving the certificate of sale the county auditor must file it and make an entry in a book similar to that required of the treasurer. On the presentation of the receipt of the person named in the certificate, or of the treasurer for his use, of the total amount of the redemption money, the auditor must mark the word "redeemed," the date and by whom redeemed, on the certificate and on the margin of the book where the entry of the certificate is made. If the property is not redeemed within twelve months from the sale the treasurer must make to the purchaser, or his assignees, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption. The treasurer shall receive from the purchaser, for the use of the district, one dollar for making such deed: Provided, If redemption is not made of any lot, parcel or tract of land not larger than one acre, the fee for a deed shall be twenty-five cents and any person or district holding a duplicate certificate covering more than one tract of land, the several parcels or tracts of land mentioned in the certificate may be included in one deed. R&B §6444; L. 13 ch. 165.

271 §65 *passim* §139.

Repealed 271 §146a Supp.

271 §69. **Bids—Bonds and Work.** §35. Any person to whom a contract may have been awarded for the construction of a canal or any of the works of the district, or any portion thereof, or for the furnishing of labor or material, shall enter into a bond with good and sufficient sureties, to be approved by the board of directors, payable to said district for its use, for at least 25 per cent of the amount of the contract price, conditioned for the faithful performance of said contract, and with such further conditions as may be required by law in the case of contracts for public work, and as may be required by resolution of the board. All works shall be done under the direction and to the satisfaction of the engineer of the district, and be approved by the board. Whenever in the construction of the district canal or canals, or other works, or the furnishing of materials therefor, the board of directors shall determine to let a contract or contracts for the doing of said work or the furnishing of said materials, a notice calling for sealed proposals shall be published in a newspaper in the county in which the office of the board is situated, and in any other newspaper which may be designated by the board, and for such length of time, not less than two weeks, as may be fixed by the board. At the time and place appointed in the notice for the opening of bids, the sealed proposals shall be opened in public, and as soon as convenient thereafter, the board shall let said work or the contract for the purchase of materials, either in portions or as a whole, to the lowest responsible bidder, or the board may reject any or all bids and readvertise, or may proceed to construct the work under its own superintendence: Provided, That the provisions of this section in regard to public bidding shall not apply in cases where the board is authorized to exchange bonds of the district in payment for labor and material. R&B §6450. L. 13 ch. 165.

271 §71. **Moneys, How Paid Out.** §36. The county treasurer of the county in which is located the office of any irrigation district shall be and is hereby constituted ex-officio district treasurer of said district, and said county treasurer shall be liable upon his official bond and to criminal prosecution for malfeasance and misfeasance, or failure to perform any duty herein prescribed as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. It shall be his duty to collect and receipt for all assessments and taxes levied as in this chapter provided. There shall be deposited with said county treasurer all sums collected for the defraying

of the expenses of the district, whether said sums are collected by tolls or special assessments, and they shall be placed by the county treasurer in the expense fund of the district. The said county treasurer shall also keep such other funds as may be required by law governing irrigation districts, or provided for by this chapter, and shall place therein moneys collected for said funds. The county treasurer shall pay out the moneys received or deposited with him, or any portion thereof, upon warrants drawn on the several funds, signed by the president and countersigned by the secretary of the district, except the sums to be paid out of the bond fund upon the coupons and bonds presented to the treasurer. The said treasurer shall report, in writing, on the first Monday in each month to the board of directors of the district, the amount of money held by him, the amount in each fund, the amount of receipts for the month preceding in each fund, and the amount or amounts paid out of each fund, and said report shall be filed with the secretary of the board. The secretary shall also report to the board, in writing, on the first Monday in each month, the amount deposited with the county treasurer belonging to the district during the preceding month, the amount of receipts for the month preceding, and the amount and items of expenditures during the preceding month, and said report shall be filed in the office of the board. R&B §6451; L. '13 ch. 165.

271 §73. **Moneys From Which Expenses Paid.** §37. The cost and expense of purchasing and acquiring property, and constructing the works and improvements herein provided for, and the expenses incidental thereto, and for the carrying out of the purposes of this chapter, may be paid by the board of directors out of the funds received from bond sales. For the purpose of defraying the expenses of the organization of the district, and of the care, operation, management, repair and improvement of such portions of said canal and works as are completed and in use, the board may either fix rates or tolls and charges, and collect the same from all persons using said canal for irrigation and other purposes, or they may provide for the payment of said expense by a levy of assessment therefor, or by both said tolls and assessment; if by the latter method, such levy shall be made on the completion and equalization of the assessment roll each year, and the board shall have the same powers and functions for the purposes of said levy as possessed by it in case of levy to pay bonds of the district. The procedure for the collection of assessments by such levy shall in all respects conform to the provisions of this chapter, relating to the payment of principal and interest of bonds herein provided for, and shall be made at same time. R&B §6452; L. '13 ch. 165.

271 §101. **Petition Granted, When.** §51. The board of directors, as a condition precedent to the granting of the petition to include other lands in the district, shall require that the petitioners severally pay to such district such respective sums as shall be determined by the board at the hearing above provided for, which sums shall be such equitable amount as such lands shall pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. R&B §6466 L. '13, ch. 165.

271 §145 **Refunding Assessments.** §72. In case of the exclusion of any lands under the provisions of this act, the board of directors shall determine what refund, if any, shall be made to any person or persons who have paid any assessments to such district on any lands so excluded, but such refund, if any, shall be on a basis equitable alike to lands remaining in the district and lands excluded therefrom. Such payment shall be made in the same manner as other claims against the district, and from such fund or funds as the board of directors may designate, and which may be legally applied to such payments. R&B §6488 L. '13, ch. 165.

271 §146. **Prior Proceedings Saved.** §23. All irrigation districts in the State of Washington, and all proceedings had for the organization of any irrigation district, and all proceedings now pending in or relating to any irrigation district, shall be governed and controlled by the terms of this act, and this act shall not be construed as abridging or abrogating any of the rights or privileges of any irrigation district now organized, or being organized, and

any contract, obligation, lien or charge, or bonds of any district, which may have been made, incurred, authorized or issued, prior to the taking effect of this act shall not be abridged or impaired by the terms of this act, but this act shall be construed as being a continuation of, and in aid of the previously existing laws relating to irrigation districts, except as to the sections specially repealed; and if in any instance relating to an existing district or any of its proceedings, the term of this amendatory act shall not be legally applicable, the district may proceed, and any contract, obligation, lien or charge against it may be enforced, under the terms and provisions of the law relating to irrigation districts in force and in effect prior to the taking effect of this act. L. '13, ch. 165.

271 §146a. **Laws Repealed.** §24. That sections 6448 (271 §65), 6458 (271 §85), 6459 (271 §87), 6460 (271 §89), 6461 (271 §91), 6474 (271 §117), 6484 (271 §137), and 6485 (271 §139) of (Pierce 1912) and Remington & Ballinger's Annotated Codes and Statutes of Washington, be, and the same are hereby repealed. L. '13, ch. 165.

271 §146b. **Act 1913 Repealed and Saved.** §25. Whereas, an emergency act entitled "An act relating to irrigation districts (L. '13, ch. 13), amending sections 6427, 6439, 6441, 6442 and 6444, Remington & Ballinger's Annotated Codes and Statutes of Washington, and declaring the same necessary for the immediate need of the public peace, health and safety," was passed and enacted. at the present session of the legislature of the State of Washington; and whereas, the subject matter of said entitled act is the same as covered by certain provisions of this act, and this act is the latest legislative declaration upon the subject matter contained therein, it is hereby declared that the prior emergency act aforesaid be, and the same shall be repealed upon the taking effect of this act, but said prior act shall remain in full force and virtue until the time when this act shall become effective. L. 13, ch. 165.

271 §185.

Riparian owner on navigable stream has no rights as such owner, State ex Horn v. Court, 70 W. 442.

279 §1.

Action maintained against executor without showing insolvency of survivor,

Brownfield v. Holland, 63 W. 86.

283 §27.

Separation of a juror in a felony case is reversible error, though defendant may not have been prejudiced thereby, nor a formal objection urged at the time, State v. Bennett, 71 or 72 W.

TITLE 287—JUSTICES' PROCEDURE.

AN ACT relating to justices of the peace and constables in cities having a population of 50,000 or more inhabitants and providing for their election or appointment and fixing their salaries. Approved March 7, 1913. Laws '13, ch. 41.

287 §1. **Justices in Cities—Cities Classified.** §1. After the taking effect of this act, there shall be in cities of fifty thousand population two justices of the peace and two constables, and one additional justice and one additional constable in such cities for each additional fifty thousand population or a major fraction thereof, to be elected at the general election to be held in November, 1914, and quadrennially thereafter, whose term of office shall be for the term of two years from the second Monday of January following the election: Provided, There shall not be more than five justices in any city unless the same has a population of 300,000 or more: And provided further, That nothing in this act shall be construed to affect justices of the peace or constables or the offices of justices of the peace or constables in cities having a population of less than fifty thousand inhabitants.

287 §3. **Appointment.** §2. Whenever it shall appear to the board of county commissioners of any county containing a city of fifty thousand or more that such city is entitled to an additional justice and constable as provided in this act, the board of county commissioners are hereby authorized and directed immediately after this act goes into effect to appoint such additional

justice and constable in such city, who shall hold office until his successor is elected and qualified at the next general election.

287 §5. **Salaries.** §3. The salaries of such justices of the peace in all cities having a population in excess of 100,000 according to the census of the federal government last taken shall be eighteen hundred (1800) dollars per annum.

287 §7. **When Salaries as Heretofore.** §4. The salaries of justices of the peace and constables hereafter elected or appointed shall be and remain the same as are now provided by law.

287 §119.

A judgment in attachment proceedings, upon service by publication, gives no right to levy upon debtor's personal property, except what has been previously levied upon by attachment or other process, Clifford v. Pateros Transfer Co., 71 or 72 W.

287 §141.

Service good on any agent of foreign corporation, Barrett Mfg. Co. v. Kennedy, 73 W.

287 §323.

Under 291 §127, damages included in amount in controversy on appeal, State ex C. M. & P. S. Ry. v. Court, 73 W.

TITLE 291—LABOR.

291 §1.

Act valid, State ex rel. Davis-Smith Co. v. Clausen, 65 W. 156.

Valid as an exercise of police power—prior contracts—collection by state etc. from public work, State ex Pratt v. Seattle, 73 W.

291 §9. **Schedule of Awards.** §5. Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed seventy-five dollars (\$75) in any case, and

(1) If the workman leaves a widow or invalid widower, a monthly payment of twenty dollars (\$20) shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive five dollars (\$5) per month for each child of the deceased under the age of sixteen years at time of the occurrence of the injury until such minor child shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed thirty-five dollars (\$35). Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz.: the sum of two hundred forty dollars (\$240), but the monthly payment for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but a child or children under the age of sixteen years, a monthly payment of ten dollars (\$10) shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars (\$35), and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent. of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed twenty dollars (\$20) per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the

necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive twenty dollars (\$20) per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the age of sixteen years, paid to the child increased 100 per cent., but the total to all children shall not exceed the sum of thirty-five dollars (\$35) per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of twenty dollars (\$20).

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of twenty-five dollars (\$25). If the husband is not an invalid, the monthly payment of twenty-five dollars (\$25) shall be reduced to fifteen dollars (\$15).

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars (\$5) for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars (\$35).

(c) If the injured workman die during the period of permanent total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars (\$20) per month until death or remarriage, to be increased five dollars (\$5) per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is or shall be without father or mother, such child shall receive ten dollars (\$10) per month until arriving at the age of sixteen years. The total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars (\$35). Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2) and (3) of the foregoing subdivisions (b) shall apply so long as the total disability shall continue, increased fifty per cent. for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent. of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the state treasurer, and he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated upon the theory that a monthly payment of twenty dollars (\$20), to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars (\$4,000), but the total in no

case to exceed the sum of four thousand dollars (\$4,000). The state treasurer shall invest said sum at interest in the class of securities, provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the accident fund. The state treasurer shall keep accurate account of all such investments of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. For any permanent partial disability resulting from an injury, the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of fifteen hundred dollars (\$1500). The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent. of the amount awarded the minor workman.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed four thousand dollars (\$4,000) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of twenty dollars (\$20) to a person thirty years of age is worth four thousand dollars (\$4,000), or, with the consent of the beneficiary, for a smaller sum.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred. L. 13, ch. 148.

291 §9.

The dependent mother of a son killed under 21 years of age is entitled to a monthly allowance so long as her dependency exists, not merely until he would have become of age, *Bond v. Pratt*, 72 W. 291 §39.

Mandamus does not lie to compel collection of delinquent assessments, *State ex rel. Rosbach v. Pratt*, 68 W. 157.

On appeal from an order making an allowance for a workman's death, the supreme court cannot allow an attorney's fee or increase the one allowed by the superior court, *Bond v. Pratt*, 72 W.

291 §61.

Notice by employee of injury to trustee of dissolved corporation sufficient, *Jones v. Francis*, 70 W. 676.

Employee does not assume risk by working on unguarded saw, *Young v. Aloha Lum. Co.*, 63 W. 600.

Sawyer assumes risk where honest effort to guard saw is made, *Burns v. Lendinghaus*, 65 W. 448.

Movable flat car not factory, etc., *Casey v. Barber etc. Co.*, 192 Fed. 432.

Placing of guard after injury may be shown—contributory negligence—assumed risk, *Carstens Packing Co. v. Swinney*, 186

Fed. 50.

191 §77.

Evidence held to sustain a conviction, State v. Cherry Point Fish Co., 72 W.

191 §79.

Is not class legislation, there being no discrimination as to persons, State v. Tice, 69 W. 403.

191 §81.

The lower limit need not be given if the upper limits are fixed, Guinn v. Roelofs, 71 W.

291 §115.

City ordinance prescribing minimum wage invalid, Malette v. Spokane, 68 W. 578.

191 §121.

A foreman of a sawmill on a river, who

gave orders on his own responsibility, may be found guilty, State v. Botchford, 71 W.

291 §117.

A teamster employed by a city cannot be compelled to care for his horses and wagon before and after his eight hours' work, Davies v. Seattle, 67 W. 532.

291 §127.

Damages included in amount in controversy on appeal, State ex C. M. & P. S. Ry. v. Court, 73 W.

291 §145.

Act constitutional, State v. Somerville, 67 W. 638.

Persons and not establishments excepted and held valid, State v. Pacific Am. Fisheries Co., 73 W.

AN ACT to protect the lives, health, morals of women and minors, workers, establishing an industrial welfare commission for women and minors, prescribing its powers and duties, and providing for the fixing of minimum wages and the standard condition of labor for such workers and providing penalties for violation of the same, and making an appropriation therefor. Approved March 24, 1913. Laws '13, ch. 174.

291 §161. **Minimum Wage—Police Power.** §1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.

291 §163. **Unlawful to Employ Women.** §2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.

291 §165. **Commission Created.** §3. There is hereby created a commission to be known as the "Industrial Welfare Commission" for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women.

291 §167. **Appointment and Removal.** §4. Said commission shall be composed of five persons, four of whom shall be appointed by the governor, as follows: The first appointments shall be made within thirty (30) days after this act takes effect; one for the term ending January 1st, 1914; one for the term ending January 1st, 1915; one for the term ending January 1st, 1916; and one for the term ending January 1st, 1917; Provided, however, That at the expiration of their respective terms, their successors shall be appointed by the governor to serve a full term of four years. No person shall be eligible to appointment as a commissioner hereunder who is, or shall have been at any time within five years prior to the date of such appointment a member of any manufacturers or employers association or of any labor union. The governor shall have the power of removal for cause. Any vacancies shall be filled by the governor for the unexpired portion of the term in which the vacancy shall occur. The commissioner of labor of the State of Washington shall be ex-officio member of the commission. Three members of the commission shall constitute a quorum at all regular meetings and public hearings.

291 §169. **Salaries—Expenses—Vouchers.** §5. The members of said commission shall draw no salaries. The commission may employ a secretary whose salary shall be paid out of the moneys hereinafter appropriated. All claims for expenses incurred by the commission shall, after approval by the commission, be passed to the state auditor for audit and payment.

291 §171. **Duties of Commission.** §6. It shall be the duty of the commis-

sion to ascertain the wages and conditions of labor of women and minors in the various occupations, trades and industries in which said women and minors are employed in the State of Washington. To this end, said commission shall have full power and authority to call for statements and to examine, either through its members or other authorized representatives, all books, pay rolls or other records of all persons, firms and corporations employing females or minors as to any matters that would have a bearing upon the question of wages of labor or conditions of labor of said employes.

291 §173. **Records of Employer...** §7. Every employer of women and minors shall keep a record of the names of all women and minors employed by him, and shall on request permit the commission or any of its members or authorized representatives to inspect such record.

291 §175. **All Minors Included.** §8. For the purposes of this act a minor is defined to be a person of either sex under the age of eighteen (18) years.

291 §177. **Hearings—Witnesses.** §9. The commission shall specify times to hold public hearings, at which times employers, employes or other interested persons may appear and give testimony as to the matter under consideration. The commission shall have power to subpoena witnesses and to administer oaths. All witnesses subpoenaed by the commission shall be paid the same mileage and per diem allowed by law for witnesses before the superior court in civil cases.

291 §179. **Findings—Conferences.** §10. If, after investigation, the commission shall find that in any occupation, trade or industry, the wages paid to female employes are inadequate to supply them necessary cost of living and to maintain the workers in health, or that the conditions of labor are prejudicial to the health or morals of the workers, the commission is empowered to call a conference composed of an equal number of representatives of employers and employes in the occupation or industry in question, together with one or more disinterested persons representing the public; but the representatives of the public shall not exceed the number of representatives of either of the other parties; and a member of the commission shall be a member of such conference and chairman thereof. The commission shall make rules and regulations governing the selection of representatives and the mode of procedure of said conference, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of said conference. On request of the commission, it shall be the duty of the conference to recommend to the commission an estimate of the minimum wage adequate in the occupation or industry in question to supply the necessary cost of living, and maintain the workers in health, and to recommend standards of conditions or labor demanded for the health and morals of the employes. The finding and recommendations of the conference shall be made a matter of record for the use of the commission.

291 §181. **Order Fixing Wage.** §11. Upon the receipt of such recommendations from a conference, the commission shall review the same and may approve any or all of such recommendations, or it may disapprove any or all of them and re-commit the subject or the recommendations disapproved of, to the same or a new conference. After such approval of the recommendations of a conference the commission shall issue an obligatory order to be effective in sixty (60) days from the date of said order, or if the commission shall find that unusual conditions necessitate a longer period, then it shall fix a later date, specifying the minimum wage for women in the occupation affected, and the standard conditions of labor for said women; and after such order is effective, it shall be unlawful for any employer in said occupation to employ women over eighteen (18) years of age for less than the rate of wages, or under conditions of labor prohibited for women in the said occupation. The commission shall send by mail so far as practicable to each employer in the occupation in question a copy of the order, and each employer shall be required to post a copy of said order in each room in which women affected by the order are employed. When such commission shall specify a minimum wage hereunder the same shall not be changed for one year from the date when such minimum wage is so fixed.

291 §183. **Orders Revised.** §12. Whenever wages or standard conditions

of labor have been made mandatory in any occupation, upon petition of either employers or employes, the commission may at its discretion re-open the question and re-convene the former conference or call a new one, and any recommendations made by such conference shall be dealt with in the same manner as the original recommendations of a conference.

291 §185. **Wage of Person Under Disability.** §13. For any occupation in which a minimum rate has been established, the commission through its secretary may issue to a woman physically defective or crippled by age or otherwise, or to an apprentice in such class of employment or occupation as usually requires to be learned by apprentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage; and the commission shall fix the minimum wage for said person, such special license to be issued only in such cases as the commission may decide the same is applied for in good faith and that such license for apprentices shall be in force for such length of time as the said commission shall decide and determine is proper.

291 §185. **Wages of Minors.** §14. The commission may at any time inquire into wages, and conditions of labor of minors, employed in any occupation in the state and may determine wages and conditions of labor suitable for such minors. When the commission has made such determination in the cases of minors it may proceed to issue an obligatory order in the manner provided for in section 11 of this act, and after such order is effective it shall be unlawful for any employer in said occupation to employ a minor for less wages than is specified for minors in said occupation, or under conditions of labor prohibited by the commission for said minors in its order.

291 §187. **Labor Commissioner Shall Furnish Data.** §15. Upon the request of the commission the commissioner of labor of the State of Washington shall furnish to the commission such statistics as the commission may require.

291 §189. **Employer Discriminating Against Witness—Penalty.** §16. Any employer who discharges, or in any other manner discriminates against any employe because such employe has testified or is about to testify, or because such employer believes that said employe may testify in any investigation or proceedings relative to the enforcement of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of from twenty-five dollars (\$25.00) to one hundred dollars (\$100) for each such misdemeanor.

291 §191. **Employing Under Wage Fixed—Penalty.** §17. Any person employing a woman or minor for whom a minimum wage or standard conditions of labor have been specified, at less than said minimum wage, or under conditions of labor prohibited by the order of the commission; or violating any other of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00).

291 §193. **Complaints of Underpay.** §17½. Any worker or the parent or guardian of any minor to whom this act applies may complain to the commission that the wages paid to the workers are less than the minimum rate and the commission shall investigate the same and proceed under this act in behalf of the worker.

291 §195. **Recovery of Underpay.** §18. If any employe shall receive less than the legal minimum wage, except as hereinbefore provided in section 13, said employe shall be entitled to recover in a civil action the full amount of legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid upon account.

291 §197. **Appeals.** §19. All questions of fact arising under this act shall be determined by the commission and there shall be no appeal from its decision upon said question of fact. Either employer or employe shall have the right of appeal to the superior court on questions of law.

291 §199. **Reports to Governor.** §20. The commission shall biennially make a report to the governor and state legislature of its investigations and proceedings.

AN ACT relating to electrical construction and the maintenance and use of electric wires, apparatus and appliances, and providing penalties for the violation thereof. Approved March 20, 1913. Laws '13, ch. 130.

291 §201. **Electrical Construction, Rules.** §1. It shall be unlawful from and after the passage of this act for any officer, agent, or employee of the State of Washington, or of any county, city or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this act.

Rule 1. No wire or cable carrying a current of less than seven hundred fifty (750) volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is less than thirteen (13) inches from the center line of any pole. And no such wire shall be run past any pole to which it is not attached at a distance of less than thirteen (13) inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with signal wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said aerial cable is placed.

Rule 2. No wire or cable used to carry a current of over seven hundred fifty (750) volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is nearer than twenty-four (24) inches to the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four (24) inches from the center line thereof: Provided, That this shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture, as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: Provided, further, That where said wire or cable is run vertically, it shall be rigidly supported and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty (750) volts, and less than seventy-five hundred (7,500) volts of electricity, shall be run, placed, erected, maintained or used within three (3) feet of any wire or cable carrying a current of seven hundred fifty (750) volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred (7,500) volts of electricity shall be run, placed, erected, maintained, or used within seven (7) feet of any wire or cable carrying less than seventy-five hundred (7,500) volts.

Provided, That the foregoing provisions of this paragraph shall shall not apply to any wire or cable within buildings or other structures; nor where the same are run from under ground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure,

and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole.

Provided, That where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms.

Provided, further, That as between any two wires or cables mentioned in Rules, 1, 2 and 3 of this section, only the wires or cables last in point of time so run, placed, erected or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained or used on any pole at a distance of less than three (3) feet from any wire or cable carrying a current of over three hundred (300) volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2 and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: Provided, That telephone, telegraph or signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three (3) feet from any line carrying a voltage of less than seven hundred and fifty (750) volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten (10) K. W. shall be supported by a double class-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained or used on any cross-arm or other appliance on a pole upon which is placed a series electric arc lamp or arc light: Provided, This shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test in accordance with the standardized rules of the American Institute of Electrical Engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have attached to it a tag showing the date on which the test was made, and the name of the person making the test.

Rule 6. No wire or cable carrying more than seventy-five hundred (7,500) volts of electricity shall be run, placed, erected, maintained or used on curves or corners of greater than fifteen (15) degrees without maintaining guards sufficient to hold said wire or cable in case of breakage of pins or insulators to which the same are attached, except where said wire or cable terminates or dead-ends on curves or corners.

No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential distributing systems shall be grounded in all cases where the normal maximum difference of potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty (150) volts. When no neutral point or wire is accessible one side of the secondary circuit shall be grounded in the case of single phase transformers, and any one common point in the case of inter-connected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty (150) volts, grounding shall be permitted. Such grounding shall be done in the manner provided for in Rule 33.

Rule 8. In all cases where a wire or cable larger than No. 14 B. W. G. originates or terminates on insulators attached to any pin or other appliance, said wire or cable shall be attached to at least two insulators.

Provided, however, That this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits or any incorporated city or town.

Rule 9. All poles along which shall be run vertically any wire or cable used to conduct or carry a current of over two hundred fifty (250) volts shall be provided with steps, and no steps shall be placed on any pole nearer the ground than seven (7) feet.

Rule 10. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and, except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven (7) feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 11. No guy wire or cable shall be placed, run, erected, maintained or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit breakers at all times at a distance of not less than 8 feet nor more than 10 feet measured along the line of said guy wire or cable from each end thereof: Provided, No circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 12. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at least two circuit breakers, one of which shall at all times be maintained no less than four (4) feet nor more than six (6) feet distant from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other circuit breaker shall be maintained at the building or at the pole: Provided, That in span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: Provided, further, That in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 13. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven (7) feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 14. All wires or appliances carrying a current of less than seventy-five hundred (7,500) volts, inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so guarded, located, or arranged as to protect any person from injury. All wires or appliances carrying a current of over seventy-five hundred (7,500) volts, shall be insulated, or so located or arranged, as to protect any person from injury; or shall be protected by a grounded metallic guard screen or other device equally as efficient, so arranged that no person may come within three times the arcing distance of the given voltage of such conductor or appliance as rated by the American Institute of Electrical Engineers for discharges between needle points; or by a guard rail or other device so arranged that no person may come within three feet of the same.

Rule 15. The secondary circuit of current transformers, the casings of all potential regulators and arc light transformers, all metal frames of all switchboards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 33.

Rule 16. All generators and motors having a potential of more than three hundred (300) volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 17. Suitable insulated platforms or mats shall be provided for the use of all men while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred (300) volts.

Rule 18. Every generator, motor, transformer, switch or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 19. In all cases there shall be two switches used at the station or substation in each feeder for the transmission of electrical energy at constant potential of seven hundred fifty (750) volts or over; one shall be an oil switch so situated as to insure the safety of the person operating the same; the other shall be a disconnecting switch: Provided, That oil switches shall not be required in direct current feeders.

Rule 20. When lines of seven hundred fifty (750) volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 21. All switches installed with overload protection devices, and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 22. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 23. There shall be provided in all distributing stations a ground detecting device.

Rule 24. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than $2\frac{1}{4}$ by $4\frac{1}{2}$ inches in size, which shall be attached to all switches opened for the purpose of linemen or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his own name.

Rule 25. No manhole containing any wire carrying a current of over three hundred (300) volts shall be less than six (6) feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be 6 feet from wall to wall: Provided, however, That this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work; Provided, further, That the foregoing provisions of this paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 26. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 27. No manhole shall have an opening to the outer air of less than twenty-six (26) inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 28. No manhole shall have an opening which is, at the surface of the ground, within a distance of three (3) feet at any point from any rail of any railway or street car track: Provided, That this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: Provided, That in complying with the provisions of this rule only the construction last in point of time performed, placed or erected shall be held to be in violation thereof.

Rule 29. Whenever persons are working in any manhole whose opening to the outer air is less than three (3) feet from the rail of any railway or street car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 30. There shall be provided proper cutout switches on all primary and secondary wires in all manholes where the wires are connected with transformers or other electrical devices therein.

Rule 31. All persons employed in manholes shall be furnished with insulated platforms so as to protect the workmen while at work in the manholes: Provided, That this paragraph shall not apply to manholes containing only telephone, telegraph or signal wires or cables.

Rule 32. No work shall be permitted to be done on any live wire, cable or appliance carrying more than seven hundred fifty (750) volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: Provided, That in districts where only one competent and experienced person is regularly employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced person and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 33. The grounding provided for in these rules shall be done in the following manner: by connecting a wire or wires not less than No. 6 B. & S. gauge to a water pipe of a metallic system outside of the meter, if there is one, or to a copper plate 1-16 inch thick and not less than 3 feet by 6 feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B. & S gauge elsewhere: Provided, That the maximum cross section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils and short bends shall be avoided: Provided, That the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters.

291 §203. **Act to Be Posted.** §2. A copy of this act printed in a legible manner shall be kept posted in a conspicuous place in all electric plants, stations and storerooms.

291 §205. **Time Allowed.** §3. All wires, cables, poles, electric fixtures or appliances of every kind or nature being used or operated at the time of the passage of this act shall be changed, and made to conform with the provisions of this act on or before five (5) years from the date of its passage.

Provided, however, That the public service commission of Washington shall have power, upon notice and hearing, to order and require the erection of all guards, protective devices, and methods of protection which in the judgment of the commission are necessary and should be constructed previous to the expiration of the time fixed in this section: Provided, however, That it shall be lawful to place additions, wires, cables, electrical fixtures or appliances upon existing poles or cross-arms so long as the new construction shall be made to conform to the provisions of this act.

Provided, further, That nothing in this act shall apply to manholes already constructed, except the provisions for guards, sanitary conditions, drainage and safety appliances specified in Rules 20, 24, 26, 29, 30, 31 and 32.

29 §207. **Change of Rules.** §4. It shall be the duty of the public service commission of Washington to enforce all the provisions and rules of this

act and it is hereby empowered upon hearing to amend, alter and change any and all rules herein contained, or any part thereof, and to supplement the same by additional rules and requirements, after first giving reasonable public notice and a reasonable opportunity to be heard to all affected thereby: Provided, That no rule amending, altering or changing any rule supplementary to the rules herein contained shall provide a less measure of safety than that provided by the rule amended, altered or changed.

A violation of any rule herein contained or of any rule or requirement made by the commission which it is hereby permitted to make shall be deemed a violation of this act.

291 §209. **Act Applies to All Construction—Penalties.** §5. Every public service company, county, city, or other political subdivision of the State of Washington, and all officers, agents and employees of any public service company, county, city, or other political subdivision of the State of Washington, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this act, so long as the same shall be and remain in force. Any public service company, county, city, or other political subdivision of the State of Washington, which shall violate or fail to comply with any provision of this act, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, pursuant to this act, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this act shall be a separate and distinct offense, and in case of a continued violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

291 §211. **Act Applies to Persons.** §6. Every officer, agent or employee of any public service company, the State of Washington, or any county, city, or other political subdivision of the State of Washington, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company, the State of Washington, or any county, city or other political subdivision of the State of Washington, of any provision of this act, or who shall fail to obey, observe or comply with any order of the commission, pursuant to this act, or any provision of any order of the commission, or who procures, aids or abets any such public service company, the State of Washington, or any county, city or other political subdivision of the State of Washington, in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor.

295 §1.

Tenant cannot otherwise apply money paid for last two months, *Dutton v. Christie*, 63 W. 372.

Oral modification of written lease valid if partially performed, *Oregon & W. R. Co. v. Elliott Bay Co.*, 70 W. 148.

Surety for rent under voidable lease is bound, *Backus v. Feeks*, 71 W.

A lease for one year with privilege of two years' renewal is a single contract and is invalid unless in writing and acknowledged, *Anderson v. Frye & Bruhn*, 69 W. 89.

TITLE 305—LICENSES.

AN ACT relating to the use and furnishing of stamps, coupons, tickets, certificates, cards, or other similar device, for or with the sale of goods, wares and merchandise, and providing a penalty for violation thereof.

Approved March 20, 1913. Laws '13, ch. 134.

305 §55. **Trading Stamps, Etc.—License.** §1. Every person, firm or corporation who shall use, and every person, firm or corporation who shall furnish to any other person, firm or corporation to use, in, with, or for the sale of any goods, wares or merchandise, any stamps, coupons, tickets, certificates, cards, or other similar devices which shall entitle the purchaser receiving the same with such sale of goods, wares or merchandise to procure from any person, firm, or corporation any goods, wares, or merchandise, free of charge or for less than the retail market price thereof, upon the production of any number of said stamps, coupons, tickets, certificates, cards, or other

similar devices, shall before so furnishing, selling, or using the same obtain a separate license from the auditor of each county wherein such furnishing or selling or using shall take place for each and every store or place of business in that county, owned or conducted by such person, firm or corporation from which such furnishing or selling, or in which such using, shall take place.

305 §57. License Tax—License. §2. In order to obtain such license the person, firm, or corporation applying therefor shall pay to the county treasurer of the county for which such license is sought the sum of six thousand dollars, and upon such payment being made to the county treasurer he shall issue his receipt therefor which shall be presented to the auditor of the same county, who shall upon the presentation thereof issue to the person, firm, or corporation making such payment a license to furnish or sell, or a license to use, for one year, the stamps, coupons, tickets, certificates, cards, or other similar devices mentioned in section 1 of this act. Such license shall contain the name of the grantee thereof, the date of its issue, the date of its expiration, the town or city in which and the location at which the same shall be used, and such license shall be used at no place other than that mentioned therein.

305 §55.

City may require license for trading

stamps, *Sperry & Hutchinson v. Tacoma*,

68 W. 254.

305 §59. Stamps, Etc., Prohibited. §3. No person, firm, or corporation shall furnish or sell to any other person, firm, or corporation to use, in, with, or for the sale of any goods, wares, or merchandise, any such stamps, coupons, tickets, certificates, cards, or other similar devices for use in any town, city or county in this state other than that in which such furnishing or selling shall take place.

305 §61. Penalty. §4. Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a gross misdemeanor.

TITLE 309—LIENS.

309 §1.

Callahan v. Aetna Indemnity Co. affirmed, *McCreery v. Carter*, 73 W.

Recording or filing a lien claim is not necessary, *Hewitt-Lea Lumber Co. v. Chesley*, 68 W. 53.

Injury by ships to bridge remedy in state courts, *Martin v. West*, 222 U. S. 191.

309 §13.

Logger's lien lost by laches in presenting checks, *Hunt v. Panhandle Lum. Co.*, 65 W. 645.

Expressly allows a lien on logs for team hire, *Hunt v. Panhandle Lum. Co.*, 66 W. 645.

One who sells meals to employees and is paid by employer out of wages earned is not entitled to logger's lien as a "cook," *Akers v. Lord*, 67 W. 179.

Includes railroad ties, *Forsberg v. Lundgren*, 64 W. 427.

309 §15.

Products delivered a mile away are not lienable, *Akers v. Lord*, 67 W. 179.

There can be no lien on railroad ties manufactured elsewhere than at a mill, nor after the removal of ties from the mill where manufactured, *Forsberg v. Lundgren*, 64 W. 427.

309 §51.

There can be no eloignment of logs prior to filing lien, *Akers v. Lord*, 67 W. 179.

309 §53.

Bankruptcy sale divests lien, *Shinn v. Kemp & Herbert*, 73 W.

Defective plans by owner's architect does not defeat lien, *Ward v. Pantages*, 73 W.

Nonlienable item included in action between subcontractors contractor cannot complain though liable, *Maher & Co. v. Fernandis*, 70 W. 250.

Lienor confused material used in a fifth house in which defendant had no interest and lost lien, *Sarginson v. Turner Inv. Co.*, 69 W. 234.

Substantial performance of contract shown and lien sustained, *Belknap Glass Co. v. Brown*, 69 W. 127.

Mistake making excessive charge which was conceded will not defeat lien, *Hillman v. Donaldson*, 67 W. 410.

Reliance on credit of another does not waive lien—confusion of material does not defeat lien, *Smith v. Hopper*, 67 W. 224.

Release by lien claimant without consideration void if vendee of land did not rely on release, *Seattle Lumber Co. v. Cutler*, 63 W. 662.

Subcontractors furnishing material and doing work are entitled to a lien for labor, although they lost their lien for materials through failure to deliver duplicate statements, *Heim v. Elliott*, 66 W. 361.

Complaint must allege that work was furnished at instance of owner or contractor, etc., *Belknap Glass Co. c. Kelleher*, 72 W.

Labor in removing debris from a lot prior to the erection of a building is not lienable, although provision for such work is included in the building contract, *Sound Transfer Co. v. Phinney R. & I. Co.*, 71 W. 309 §55.

Diligence required in reaching owner, *Seattle Lum. Co. v. Richardson & Elmer Co.*, 66 W. 671.

Actual notice or refusal of owner to sign delivery receipt will not satisfy statute, *Johnson v. Heirgood*, 72 W.

Fact that owner was working on house does not dispense with statements, *Culbert v. Lindvall*, 73 or 74 W.

Subcontractor must give owner duplicate statements, *Hallett v. Phillips*, 73 W.

Did not repeal 309 §1, 9, *Hewitt-Lea Lumber Co. v. Chesley*, 68 W. 53.

Has no application to a lien claimed by a contractor furnishing both labor and materials for plaster work under a contract with the owner, nor to materials furnished direct to the owner and under a contract made by the owner's agent, *Architectural Co. v. Nicklason*, 66 W. 198.

A materialman who delivers materials to an owner under contract with him need not deliver statements, *Hewitt-Lea Lumber Co. v. Chesley*, 68 W. 53.

Does not apply to materials delivered to the owner, *Rieflin v. Grafton*, 63 W. 387.

Delivery of duplicate statement to contractor cannot be construed as delivery thereof to the owner, *Seattle Lum. Co. v. Richardson & E. Co.*, 66 W. 671.

Failure to send owner duplicate statements bars right to lien, *Hewitt Lea Lum. Co. v. Sandell*, 66 W. 515.

Is not complied with by delivering with the first load one duplicate statement of all material to be furnished, *Heim v. Elliot*, 66 W. 361.

A sub-contractor will not be denied a lien where sub-contract has become in effect a contract with the owner, *Ringel v. Newman*, 69 W. 583.

The statement need not specify the price or prices, *Ringel v. Newman*, 69 W. 583. 309 §63.

The date on which defective material is replaced on demand of the owner is the date of "cessation of furnishing," *Rieflin v. Grafton*, 63 W. 387. 309 §71.

The lien expires as to a mortgagee although suit was commenced against the owner within time, where the mortgagee was not made a party, *Davis v. Bartz*, 65 W. 395.

309 §75.

Claim must be presented in probate be-

fore foreclosure, *Crowe & Co. v. Adkinson Const. Co.*, 67 W. 420.

Does not exclude a mortgagee as a necessary party to the action, *Davis v. Bartz*, 65 W. 395. 309 §81.

Note held to only fix terms of credit, *Llewellyn Iron Wks. v. Littlefield*, 74 W.

Where work is done under an oral agreement that part cash and a note for the balance would be received in payment, a lien is waived if it was so specified in the note, *Ward v. Thorndyke*, 65 W. 11. 309 §93.

Fact that some one intervenes in aid of delivery does not defeat lien, *Gate City Lum. Co. v. Montesano*, 67 W. 594.

Principal in bond paid on general account part of which was material secured by bond, held surety could not require application of payments made by principal, *Crane Co. v. U. S. Fld. & G. Co.*, 74 W.

Must be read in connection with 309 §97, *Pacific Hardware Co. v. Olson*, 72 W.

Proof of actual use questioned, *American Mill Co. v. Montesano*, 63 W. 683.

Action on contractor's bond may be maintained for supplies that do not actually become a part of the improvement. *National Surety Co. v. Bratnober Lumber Co.*, 67 W. 601.

A surety of street improvement contractor not liable for price of ties used therein and in other contracts and finally sold at a bankrupt sale, *City Retail Lumber Co. v. Title Guaranty Co.*, 72 W.

The bond of a contractor for improvement of a street does not cover repairs made on a rented steam shovel, *Standard Boiler Works v. National Surety Co.*, 71 W. 309 §95.

Title sufficient, *Hambach v. Ward*, 69 W. 351.

Act is not penal and does not require strict construction, *Hambach v. Ward*, 69 W. 351.

Contractor's creditors can only recover the reasonable value of goods or labor furnished, *Hambach v. Ward*, 69 W. 351. 309 §97.

Letters notifying treasurer of a library board of a balance due not sufficient notice, *Robinson Mfg. Co. v. Bradley*, 71 W.

Actual notice to sureties on contractor's bond for public work does not excuse failure to give written notice, *Robinson Mfg. Co. v. Bradley*, 71 W.

Judgment for quantum meruit may be given in a suit by an employee on contractor's bond, the principal and surety being allowed to make any available defenses, *Kongsbach v. Casey*, 66 W. 643. 309 §117.

A copy of lien notice must be served on employer within 30 days after it is filed for record, *Heal v. Evans Creek Co.*, 71 W.

309 §157. **Filing Lien.** §3. The owner or owners of any such sire receiving such certificate, by complying with the last two preceding sections of this chapter, shall obtain and have a lien upon the female served for the period of one year from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: Provided, Said owner or owners shall file for record a statement of account, verified by affidavit, with the county touditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together

with a description of the female served, within ten months from the date of service or date of birth, as the case may be: Provided further, That the lien upon the get of any such sire shall be a preferred lien: And provided further, That no sale or transfer of any female animal served shall defeat the right of such lien holder. R&B §3163, L. '13, ch. 53.

TITLE 329—MARRIAGE.

329 §5. **Who May Solemnize.** §1. The following named officers and persons are hereby authorized to solemnize marriages, to-wit: judges of the supreme court, judges of the superior courts, any regularly licensed or ordained minister or any priest of any church or religious denomination anywhere within the state, and justices of the peace within their respective counties. R&B §7154, Laws 13, ch. 35.

TITLE 333—MEDICINE AND SURGERY.

333 §13. **Fees Paid Over—Pay of Board.** §7. Each applicant, on making application, shall pay the secretary of the board a fee of twenty-five (\$25.00) dollars, which shall be turned over to the treasurer of the board, who shall retain fifteen (\$15.00) dollars for the fee in his possession until the board shall have passed upon the credentials of the applicant, and in case they are **insufficient the sum of fifteen (\$15.00) dollars shall be returned upon application.**

All money received or collected by said board or any member or officer thereof, during any month, shall be turned over, before the tenth day of the succeeding month to the state treasurer together with a verified statement showing the sources from which such money was derived. The treasurer of said board shall give security bond to be approved by and deposited with the auditor of the state, in the sum of one thousand dollars (\$1,000). The cost of said bond shall be paid by the state.

Each member of the board of medical examiners shall receive a compensation of five dollars per day for each day in which he is actually and necessarily engaged in attendance upon meetings of the board, in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meetings. All such compensation and expenses, and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers to be approved by a majority of said board, as in the case of state officers. The secretary and treasurer of said board shall receive a compensation to be determined by said board not to exceed \$50 per annum. R&B §8393, L. '13, ch. 82.

333 §23.

Loss of board's statement does not entitle applicant to rehearing, *State ex Stanley v. Witter*, 68 W. 356.

333 §27.

A conviction sustained where defendant diagnosed patient's ailments, used manipulations, prescribed a diet, gave advice and collected a fee, *State v. Greiner*, 63 W. 46.

TITLE 337—MILITIA.

337 §23. **Composition and Strength.** §12. Composition and strength of the National Guard. The National Guard of Washington shall include at all times an adjutant general's department, an infantry branch of not less than twelve companies, a coast artillery branch of not less than four companies and a cavalry branch of not less than one troop. The commander-in-chief may authorize and cause to be organized within the National Guard of Washington such additional departments, corps, branches, arms and or-

ganizations as he shall deem necessary, but in times of peace the total strength of the land forces shall not be in excess of four thousand officers and men. The strength and composition of departments excepting the adjutant general's department, corps, branches, arms and tactical and administrative subdivisions shall be prescribed from time to time in orders or regulations by the commander-in-chief, in the cases of tactical and administrative subdivisions at all times conforming as nearly as practicable to the laws and regulations of the United States pertaining to the militia subject to the limitations imposed by law the commander-in-chief shall have power at will to alter, divide, consolidate, disband, muster out or reorganize departments, excepting the adjutant general's department, corps, branches, arms and tactical or administrative subdivisions either now existing or hereafter created. Nothing in this section shall be construed as affecting the present status of now existing organizations. R&B §7179; L. '13, ch. 66.

337 §29. **Governor May Order Out.** §15. In event of war, insurrection, rebellion, invasion, tumult, riot, mob or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of imminent danger of the occurrence of any of said events, or in event of public disaster resulting from flood, conflagration, tempest or cataclysm, the governor shall have power to order the National Guard of Washington or any part thereof into the active service of the state, and to cause them to perform such duty as he shall deem proper. The governor shall also have power to order out the National Guard or any part thereof to preserve order and keep people within bounds at any large public assemblage, provided that such action shall be taken only upon written request of the mayor of the city and the sheriff of the county within which said assemblage is to occur. R&B §7182; L. '13, ch. 66.

337 §51. **Adjutant General—Department—Salary.** §26. The adjutant general's department shall consist of the adjutant general, one assistant adjutant general who shall be designated as adjutant general, one chief clerk, one stenographer, one storekeeper and such other civilian employes as shall be authorized by the commander-in-chief. The salary of the adjutant general shall be twenty-five hundred (\$2500.00) dollars per year. R&B §7198; L. '13, ch. 66.

337 §53. **Powers and Duties—Term—Bond.** §27. The adjutant general shall be ex-officio chief of staff, and in the absence of orders from the commander-in-chief to the contrary, he shall be the acting chief of all staffs, corps, and departments not otherwise provided for in this act. He shall hold office until his successor is detailed and qualified. He shall appoint the chief clerk, stenographer and storekeeper and may remove any of them in his discretion.

The expenses of the adjutant general's department, necessary to the military service, shall be audited, allowed and paid as other military expenditures are audited, allowed and paid. Before entering upon his official duties, the adjutant general must execute an official bond running to the State of Washington in the penal sum of twenty thousand (\$20,000.00) dollars conditioned upon the faithful performance of his duties, said bond to be submitted to the attorney general for approval, and when approved to be filed in the office of the secretary of state, the cost of said bond to be paid from the military fund of the state. The adjutant general shall obtain and pay for, from the military fund, a surety company bond or bonds running to the State of Washington covering all of the officers of the National Guard of Washington responsible to the state for money or military property, such bond or bonds to be approved and filed in the same manner as the adjutant general's bond.

1. The adjutant general shall keep rosters of all active and retired officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and shall submit to the commander-in-chief during October of each even numbered year a printed biennial report of the operations and condition of the National Guard of Washington.

14. On the first day of January, of each year, he shall make a statement of the condition of the military fund, showing the amount thereof and set-

ting forth in detail all receipts from whatsoever source and all expenditures of whatsoever nature and the unexpended balance thereof. A copy of said statement shall be furnished to each commissioned officer of the active list.

2. He shall cause the military law, the regulations of the National Guard and the articles of war of the United States, and such other military publications as may be necessary for the military service to be printed, indexed and bound at the expense of the state and distributed to the commissioned officers of the National Guard.

3. He shall keep and preserve the books, arms, accoutrements, ammunition and other military property belonging to the state, not properly issued.

4. He shall keep just and true accounts of all monies received and disbursed by him.

5. He shall attest all commissions issued to military officers of this state.

6. He shall make out and transmit all militia reports, returns and communications prescribed by acts of congress or by direction of the secretary of War.

7. He shall have a seal, and all copies, orders, records and papers in his office, duly certified and authenticated under said seal, shall be evidence in all cases in like manner as if the originals were produced. The seal now used in the office of the adjutant general shall be the seal of his office and shall be delivered by him to his successor. All orders issued from his office shall be authenticated with said seal.

8. He shall make such regulations pertaining to the preparation of reports and returns and to the care and preservation of property, in possession of the state for military purposes, whether belonging to the state or to the United States, as in his opinion the conditions demand.

9. He shall attend to the care, preservation, safekeeping and repairing of the arms, ordnance, accoutrements, equipment and all other military property belonging to the state, or issued to the state by the government of the United States for military purposes, and keep accurate accounts thereof. All military property of the state, which after proper inspection, shall be found unsuitable for use of the state shall be disposed of in such manner as the commander-in-chief shall direct and the proceeds thereof paid into the military fund of the state.

10. He shall issue such military property as the necessity of the service requires and make purchases for that purpose. No military property shall be issued or loaned except upon an emergency to persons or organizations other than those belonging to the National Guard, except to such portions of the reserve militia as may be called out by the governor.

11. He shall keep on file in his office the reports and returns of troops and heads of military departments, and all other writings and papers required to be transmitted to and preserved at the general headquarters of the state militia.

12. He shall keep all records of Washington volunteers commissioned or enlisted for the war of the rebellion, Indian wars, Spanish-American war, and all other wars or insurrections, and of individual claims of citizens of Washington for service rendered in these wars or insurrections.

13. He shall establish and maintain as part of his office a bureau of records of the services of the Washington troops during said wars, and he shall be the custodian of all records, relics, trophies, colors and histories relating to such wars now in possession of, or which may be acquired by the State of Washington, and such records, relics, trophies, colors and histories shall be catalogued and arranged or filed for general reference or protection in the office of the adjutant general.

14. The duties of the assistant adjutant general, chief clerk, stenographer and storekeeper shall be prescribed by the adjutant general and in the absence or incapacity of the adjutant general, the assistant adjutant general shall perform the duties prescribed for the adjutant general. R&B §7194; Laws '13, Ch. 66.

337 §61. Selection of Officers—Vacancies. §31. All commissioned officers of the National Guard of Washington shall be appointed and commissioned by the commander-in-chief, and, except as otherwise provided in this act, they shall be chosen as follows: Whenever a vacancy shall occur in the office of the adjutant general of the state, the commander-in-chief shall detail for that position from the active list of the National Guard of Washington some officer not below the rank of captain, who shall during the continuance of such detail hold the rank of brigadier-general. No person shall be eligible for detail as adjutant general who shall have served as an officer less than three years in the aggregate in the National Guard of Washington or the regular army of the United States. The assistant adjutant general shall be an officer of the active list of the National Guard of Washington detailed for that purpose.

Vacancies created by detail of officers to the adjutant general's department, or any other staff, corps or department, shall be promptly filled precisely as though created through resignation or promotion, but officers on such details shall not lose their places in the lineal rank in the branches from which they shall have been detailed. Whenever a vacancy occurs in the organization from which an officer on detail with the adjutant general's department, or any other staff, corps, or department, shall have been detailed, for which vacancy such officer would have been eligible in the absence of such detail, such officer shall, although continuing on such detail, be promoted to the grade of such vacancy, or, if holding an increased rank and grade by virtue of such detail, shall be deemed to have received such promotion to take effect upon termination of such detail, with rank from the date of the occurrence of such vacancy.

Whenever an officer shall be relieved from duty with the adjutant general's department, or any other staff, corps or department, he shall be reassigned to the organization from which he was detailed upon the occurrence of the first vacancy therein of his rank and grade.

Whenever a vacancy occurs in the captaincy or first lieutenantcy of a company, the officer next in rank in such company shall be ordered before an examining board, and upon passing the required examination, shall be appointed, commissioned and assigned to fill such vacancy: Provided, That any officer of appropriate rank and grade originally on duty with such company and serving on detail with any staff, department or corps or on waiting orders may be relieved of duty with such staff, department or corps and assigned to duty with such company, or assigned to duty with such company from the list of waiting orders; and thereupon the senior officer in such company, if there be a vacancy, shall be ordered before an examining board and upon passing the required examination shall be appointed, commissioned and assigned to fill such vacancy.

Whenever a vacancy occurs in the office of second lieutenant of any company, the commander-in-chief, except as hereinbefore provided, shall order a competitive examination for which every enlisted man in such organization shall be eligible, and the successful candidate recommended by the examining board shall be appointed, commissioned and assigned to fill such vacancy. Any non-commissioned staff officer shall be eligible to take a competitive examination for second lieutenantcy in the company of which he was originally a member.

Whenever a vacancy shall occur among the field officers of a regiment, the senior officer of the next lower grade in the regiment shall, upon passing a proper examination, be appointed, commissioned and assigned to fill the same.

Vacancies in staff offices of the grade of second lieutenant shall be filled by assignment, or by examination, promotion and assignment of a non-commissioned staff officer, and any vacancy in a staff office of a grade higher than second lieutenant shall be filled either by assignment of an officer of the proper grade or by examination, promotion and assignment of an officer of the next lower grade, as the commander-in-chief shall direct.

No person shall be commissioned as an officer in the National Guard of

Washington unless he is a citizen of the United States and of this state, twenty-one years of age or more.

Whenever a commissioned officer shall have been examined for promotion under this act and shall fail to be recommended for promotion by the examining board, he shall be honorably discharged, and the vacancy so created shall be filled in the manner prescribed by law.

For the purpose of this act the word company or companies shall apply to and include the cavalry, infantry, coast artillery reserve and signal corps. R&B §7198; L. '13, ch. 66.

337 §75. Admission of New Companies. §38. New companies and organization of the National Guard of Washington not in excess of the limits prescribed by law, may be organized and mustered in at such times and in such manners as the commander-in-chief shall direct. R&B §7205; L. '13, ch. 66.

337 §107. Expense Allowance. §54. Each commanding officer shall be entitled to receive an allowance for the incidental expenses of his command payable quarterly in advance according to the following schedule: companies, troops, batteries and like units not to exceed twenty-five (\$25.00) dollars per month; bands not to exceed fifteen (\$15.00) dollars per month; battalions and like units not to exceed ten (\$10.00) dollars per month; regiments and like units not to exceed twenty-five (\$25.00) dollars per month.

For the first quarter of each biennial period each officer entitled to a quarterly allowance under this section shall be entitled to receive in advance the maximum allowance in full, but with his claim therefor he shall make remittance of the balance, if any, remaining unexpended from the last previous quarter, such remittance to be transmitted by the adjutant general to the state treasurer, and for each succeeding quarter of each biennial period, each such officer shall be entitled to receive such sum, not more than the maximum allowance above prescribed, as he shall have expended for authorized expenses of his command during the next preceding quarter. Each claim for quarterly allowance shall include an account current showing the items of expenditure and shall be accompanied by subvouchers for all items, each voucher stating definitely the nature and amount of the expenditure evidenced thereby. R&B §7221; L. '13, ch. 66.

337 §109. Military Auditors. §55. The board of military auditors shall consist of the adjutant general and two officers of the active list of the National Guard of Washington to be selected by the state auditor and detailed by the commander-in-chief, which board shall audit and pass upon all claims against the military appropriation. The board shall meet at the call of the adjutant general. R&B §7222; L. '13, ch. 66.

337 §113. Pay and Allowance. §57. Commissioned officers while on duty requiring pay shall receive the same pay and allowance as commissioned officers of the United States of the same grades and terms of service: Provided, That for travel only actual necessary expenses shall be allowed.

For the purpose of pay and allowance as an officer of the National Guard, service with the First Washington Volunteer Infantry, as an officer or enlisted man until muster out of that organization shall be considered equivalent to three years' service in the National Guard of Washington. For the purpose of pay and allowance of an officer in the National Guard, service as an enlisted man in the National Guard of Washington shall be considered equivalent to service as an officer, provided that said service as an enlisted man and officer be continuous.

For all duty requiring pay enlisted men in the National Guard of Washington shall receive pay at rates equivalent to twice those allowed for corresponding grades in the regular services of the United States: Provided, That the pay of cooks and handsmen shall be three (\$3.00) dollars per day. For each reenlistment, after serving a full term for three years, there shall be added ten per cent. For the purpose of pay and allowance, service for a full term of enlistment in the regular or volunteer army of the United States, or in the First Washington Volunteer Infantry until muster out of that organization shall be equivalent to a full enlistment. Enlisted men proving such service shall be allowed ten per cent additional on their pay.

This schedule of pay shall apply only to the first thirty days of any tour of duty and after the thirtieth day of any such tour, officers and men shall receive the pay allowed officers and men in the regular services of the United States of corresponding organizations, grades and terms of service.

No additional pay shall be allowed for service in the National Guard of Washington unless such service shall have been continuous.

Extra duty pay to men detailed as clerks and on similar duty may be allowed by the commanding officers of troops on duty, but in no case shall pay and extra pay exceed two and 50-100 (\$2.50) dollars per day.

Upon completion of his enlistment, or upon discharge by proper authority, each enlisted man shall receive in addition to the pay above mentioned, the sum of fifty cents for each day of state paid service not exceeding fifty days, less all proper deductions for fines or lost property. R&B §7724; L. '13, ch. 66.

337 §115. Transportation and Subsistence. §58. There shall be provided by the state transportation for all officers and transportation and subsistence for all enlisted men who shall be ordered out for encampment, field duty, or stated parades, or assembled for duty in case of riot, tumult, breach of the peace, war, insurrection, invasion or imminent danger thereof. Necessary transportation, quartermasters' stores and subsistence for troops when ordered on duty shall be contracted for by the proper officers and paid for as other military bills. There shall be allowed from the military fund for each day's service the sum of two (\$2.00) dollars per man for each horse for every mounted officer, and mounted orderly, and all members of such other organizations of the National Guard of Washington as are required to be mounted. Horses not furnished by officers or men shall be rented by the state at a cost not exceeding two (\$2.00) dollars per day for each horse. For mounted organizations the adjutant general may in his discretion cause horses to be purchased and maintained from the appropriation for maintenance. R&B §7225; L. '13, ch. 66.

337 §121. Drills. §61. At each station each company and similar unit of the National Guard shall meet at least twice in each month for drill and instruction and the commanding officer of any organization may require the officers and enlisted men of his organization to meet for drill and instruction at such times and places as he may appoint: Provided, That no pay shall be allowed for such duty. R&B §7728; L. '13, ch. 66.

337 §193. Does not impose liability of private enterprise upon state, *Riddoch v. State*, 68 W. 329.

AN ACT authorizing and empowering cities and counties to expend money from their respective current expense funds, for the purchase of armory sites. Approved March 17, 1913; Laws '13, ch. 91.

337 §225. Current Fund for Armory Sites. §1. That any city or county in the State of Washington is hereby authorized and empowered to expend money from its or their current expense funds in payment in whole or in part for an armory site whenever the legislature of the State of Washington shall appropriate money for or authorize the construction of an armory within such city or county for use of such organization or organizations of the National Guard of Washington, as may be stationed within such city or county.

345 §29.

Relocators West Cascades not required to sink shaft (54 W. 617 overruled), *National Min. & M. Co. v. Piccolo*, 57 W. 572.

345 §33.

Claimant held not to have perfected title, *Spokane Cement Co. v. Larson*, 71 W.

345 §115.

Failure to observe provisions is negligence per se, *Dollar v. Northwestern Imp. Co.*, 71 W.; *Nalewaja v. Northwestern Imp. Co.*, 63 W. 391.

Note on page 1450 of Code.

349 §3.

Cited in setting aside conveyance in bankruptcy, *Benner v. Scandinavian-Am. Bank*, 73 W.

349 §7.

The maturity of notes secured by chattel mortgage not accelerated by an action, *Haggard v. Sanglin*, 69 W. 151.

349 §35.

Conditional sale to a corporation, filed in a county, which is not the corporation's legal domicile, is of no effect as to creditors of the vendee, *First Nat. Bank v. Wilcox*, 72 W.

Vendor treated sale as absolute by taking note etc, *Winton Co. v. Broadway Auto Co.*, 65 W. 650.

Contract of conditional sale must be made before or at the time of delivery, and cannot be thereafter antedated and made to answer the purposes of a chattel mortgage, *Worley v. Metropolitan Motor*

Car Co., 72 W.

Seller did not sign contract and failed to recover in bankruptcy, *In re Osborn*, 196 Fed. 257.

Vendor recovered property in bankruptcy, *Woods v. Brunswick, etc., Co.*, 190 Fed. 935.

349 §41.

A chattel mortgage for over \$300, if recorded, need not remain on file, in order

to give notice, *Van Winkle v. Mitchum*, 66 W. 296.

349 §49.

Mortgage recorded need not be placed on file, *Van Winkle v. Mitchum*, 66 W. 296. 349 §55.

Authorizes record of assignment of mortgages, and establishes priority of lien according to priority of record, *Seattle Nat. Bank v. Ally*, 66 W. 610.

TITLE 353—MORTICIANS.

353 §9. **Bond of Treasurer.** §5. The treasurer shall give surety bond to be approved by and deposited with the auditor of the state, in the sum of \$1,000 and the members of said board shall take the oath provided by law for public officers. The costs of said bond shall be paid by the state. R&B §7040; L. '13, ch. 78.

353 §11. **Pay of Board—Fees Paid In.** §6. Each member of the state embalmers examining board shall receive a compensation of five dollars a day for each day in which he is actually and necessarily engaged in attendance upon the meetings of the board, and in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meetings; all such compensation and expenses and all expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers to be approved by a majority of said board, as in the case of state officers. The secretary and treasurer of said board shall receive a compensation to be determined by said board not to exceed \$100 per annum. All money received or collected by said board or any member or officer thereof, during any month shall be turned over before the 10th day of the succeeding month to the state treasurer, together with a verified statement showing the sources from which such money was derived. R&B §7041; L. '13, ch. 78.

TITLE 357—NEGOTIABLE INSTRUMENTS.

357 §1.

Necessity of "order or bearer," *Quast v. Ruggles*, 72 or 73 W.

Note negotiable, although due in installments without showing amount due at maturity, *Barker v. Sartori*, 66 W. 260.

357 §5.

Note is negotiable if the general credit of the maker accompanies the note, *First Nat. Bank v. Sullivan*, 66 W. 375.

357 §19.

Does not dispense with "order or bearer" for negotiability, *Quast v. Ruggles*, 72 or 73 W.

357 §31.

Unconditional endorsement of check to bank by customer may be shown to have been for collection without passing title, *Morris-Miller Co. v. Von Pressentin*, 63 W. 74.

357 §103.

What constitutes holder in good faith—actual notice—fraud, *Scandinavian Am. Bank v. Johnston*, 63 W. 187, 203.

357 §111.

Actual notice necessary—fraud, *Scandinavian Am. Bank v. Johnston*, 63 W. 187,

203.

357 §117.

Verdict for defendant on promissory note for defective stallion sustained—holder in course—burden of proof, *Citizens' Sav. Bank v. Houtchens*, 64 W. 275.

Actual notice of defect necessary—fraud, *Scandinavian Am. Bank v. Johnston*, 63 W. 187, 203.

Plaintiff suing on negotiable instrument obtained by fraud has burden of showing that he was a holder in due course, *Wells v. Duffy*, 69 W. 310.

357 §239.

Does not apply where the guarantor of a note is really the person primarily liable on debt, *Ekre v. Cain*, 66 W. 659.

357 §247.

Where after indorsement of a note by an accommodation party, and before negotiation, others signed as maker, he was discharged from liability, *Handsaker v. Pedersen*, 71 W.

357 §369.

Larceny of endorsed certificate of deposit is larceny of "check," *State v. Garland*, 65 W. 666.

TITLE 365—NOTARIES PUBLIC.

365 §7. notary unless expressly stated by law,
Perjury not predicated on oath before State v. Dallagiovanna, 69 W. 84.

AN ACT relating to the powers and duties of notaries public who are stockholders, directors, officers or employes of banks or other corporations.
Approved March 6, 1913; Laws '13, ch. 32.

365 §8. Bank Officer May Act for Another. §1. It shall be lawful for any notary public who is a stockholder, director, officer or employe of a bank or other corporations to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to protest for non-acceptance or non-payment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation: Provided, It shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer or employe, where such notary is a party to such instrument individually or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument.

TITLE 367—NURSES.

367 §13. Pay of Board—Fees to Be Paid In. §7. Each member of the nurses examining board shall receive a compensation of five dollars per day for each day in which she is actually and necessarily in attendance upon the meetings of the board and in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meetings. All such compensation and expenses and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon presentation of proper vouchers to be approved by a majority of said board, as in the case of state officers. The secretary and treasurer of said board shall receive a compensation to be determined by said board and not to exceed \$100.00 per annum. All money received or collected by said board or any officer or any member thereof during any month shall be turned over to the state treasurer before the 10th day of the succeeding month together with a verified statement showing the sources from which such money was derived. R&B §8485; L. '13, ch. 81.

TITLE 369—OPTOMETRY.

369 §15. Pay of Board—Fees to Be Paid In. §8. Each member of the board of examiners in optometry shall receive a compensation of five dollars a day for each day in which he is actually and necessarily engaged in attendance upon meetings of the board, and in going to and returning from the place of meeting, and necessary expenses incurred in attending such meetings; all such compensation and expenses and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers, to be approved by a majority of said board as in the case of state officers. The secretary-treasurer of said board shall receive a compensation to be determined by said board not to exceed \$100 per annum. All money received or collected by said board or any member or officer thereof during any month shall be turned over before the 10th day of the succeeding month to the state treasurer together with a verified statement showing the sources from which such money was derived. R&B §8473; L. '13, ch. 77.

369 §27. License Fee Persons Exempted. §14. Every registered optomet-

rist and every optometrist practicing under an exemption certificate shall in every year after 1914 pay to said board of examiners the sum of \$1.00 as a license fee for such year, such payment shall be made prior to the tenth day of January in each and every year, and in case of default of payment of such fee by any person, and after twenty days' notice of such default, his certificate may be revoked by the board of examiners until such fee is paid. L. '13, ch. 77.

373 §39.

Where state oyster lands are deeded for oyster culture with reversion and right of re-purchase, the state cannot convey the fee and reversion to a third person, *Scott v. Olympia Oyster Co.*, 63 W. 364.

377 §15.

Attachmant against foreign corporation will not hold property of copartnership with same name, *Yarbrough v. Pugh*, 63 W. 140.

377 §21.

One transacting business under his own name followed by the words "Automobile Co.," may sue in his own name without having filed a statement, *Merrill v. Caro Inv. Co.*, 70 W. 482.

Certificate not required of "Hale-Tindall Co., which contains names of all the partners, *Hale v. City Cab, etc., Co.*, 66 W. 459.

Objection waived unless raised by answer on demurrer, *Hale v. City Cab, etc., Co.*, 66 W. 459.

TITLE 385—PENITENTIARY.

385 §38a. Sales—Price—Apportionment. §4. The price at which all grain sacks manufactured at the penitentiary shall be offered for sale shall be fixed by the state board of control at such time in each year as the board shall consider proper, which price shall not exceed the estimated cost of manufacturing thereof plus a profit of 12½ per cent. on said estimated cost; and the board shall apportion all sacks manufactured among the grain-growing counties of the State of Washington, pro rata, according to the quantity of grain produced in each of said counties, during the current year as determined by the state grain inspector, and it shall be the duty of the state grain inspector to ascertain and determine approximately the yield of grain in each of said counties for said purpose. Such estimate shall be furnished to the board on or before December 31st, of each year, and it shall be the duty of the board immediately following such apportionment to cause notice to be published in an official newspaper in each of the said counties, in which notice of the quantities of grain sacks apportioned to such county and the price fixed for the sale of the same shall be stated, and the manner and time of application shall be set forth: Provided, however, That such apportionment shall not be necessary from June first to January first of each year, at which time the grain sacks manufactured at the penitentiary may be sold in the open market of the world. L. 13, ch. 38.

385 §85. Who May Apply. §5. Any resident of the State of Washington actually engaged in growing grain within the state may apply for as many of said sacks as he shall require for his individual use, which application shall be made upon blanks prescribed and furnished by the board. In making the application he shall state, under oath, the acreage of grain sown by him for that season, the probable aggregate yield therefrom, that the sacks applied for are for his individual use, and such other facts as the board of control may require. All such applications for grain sacks must be made and filed with the superintendent of the state penitentiary prior to the first day of April of each year. In the event that all of the sacks assigned to any one county shall not be applied for and sold, the state board of control shall apportion the amount not applied for in such county pro rata to such counties as may have therein an excess of applications in proportion to the excess, and if there shall be no excess the sacks not applied for shall not be sold until the first day of June, during which time any resident of the State of Washington, actually engaged in growing grain within said state may apply for said sacks in accordance with the terms of this act and upon the conditions herein stated, and after June first any sacks not sold may be sold, anywhere in the open market of the world on such terms and prices as the board of control shall deem to be for the best interests of the state. L. '13, ch. 38.

TITLE 387—PENSIONS.

AN ACT relating to the support of certain destitute women who are mothers, and prescribing penalties for those who fraudulently obtain the benefit thereof. Approved March 24, 1913; Laws '13, ch. 179.

387 §1. Mothers' Pension. §1. In every county it shall be the duty of the county commissioners to provide out of the moneys of the county treasurer an amount sufficient to meet the purposes of this law, for the support of women, whose husbands are dead, or are inmates of a penal institution or an insane asylum or who are abandoned by their husbands and such abandonment has continued for more than one year or because of total disability of their husbands, and who are unable to support their children, when such women are destitute and are mothers of children under the age of 15 years and such mothers and children reside in such counties.

387 §3. Rate. §2. The allowance to each of such women shall not exceed fifteen (\$15) dollars per month when she has but one child under the age of 15 years, and if she has more than one child under the age of 15 years, it shall not exceed the sum of fifteen dollars a month for the first child, and five dollars a month for each of the other children under the age of 15 years.

387 §5. Court Allows—Conditions. §3. Such allowance shall be made by the juvenile court in the counties where such court is held and elsewhere by the superior court, and only upon the following conditions: (1) The child or children for whose benefit the allowance is made must be living with the mother of such child or children; (2) When by means of such allowance the mother will be able to maintain a home for her child or children; (3) The mother must in the judgment of the court, be a proper person, morally, physically and mentally, for the bringing up of her children; (4) No person shall receive the benefit of this act who shall not have been a resident of a county in which such application is made for at least one year next before the making of such application for such allowance.

387 §7. Order May Be Modified. §4. Whenever any child shall reach the age of 15 years any allowance made to the mother of such child for the benefit of such child shall cease. The court may in its discretion at any time before such child reaches the age of 15 years, discontinue or modify the allowance to any mother and for any child.

387 §9. Fraud—Penalty. §5. Any person procuring fraudulently any allowance for a person, not entitled thereto, shall be deemed guilty of a gross misdemeanor.

387 §11. Procedure—Prosecuting Attorney Shall Appear. §6. In each case where an allowance is made to any woman under the provisions of this act, an order to that effect shall be entered upon the records of the court, making such allowance. Proceedings to obtain the benefit of this act shall be instituted and maintained in the same manner as proceedings are instituted and maintained in the juvenile court and the prosecuting attorney shall render all necessary assistance to applicants under this act and shall appear in every such proceeding and through the probation officer, the charity commissioner or any person having knowledge of the facts, shall carefully investigate the merits of every application to the end that this act may be fairly administered and no person granted relief hereunder except those justly entitled thereto, and no officer of the court or county officer shall receive any fees for any service rendered in carrying out the provisions of this act. A certified copy of said order shall be filed with the county auditor of the county in which such child's mother is resident, and thereupon and thereafter and so long as such order remains in force and unmodified it shall be the duty of the county auditor each month to draw his warrant on the current expense fund of the county in favor of the mother for the amount specified in such order, which warrant shall be by the auditor delivered to the mother upon her executing duplicate receipts therefor, one to be retained by the auditor and the other to be filed by the clerk with the other records in the

proceedings relating to such child or children. It shall be the duty of the county treasurer to pay such warrant out of funds in the current expense fund of the county.

TITLE 389—PHARMACY.

389 §23. Pay of Board—Fees to Be Paid In. §12. Each member of the state board of pharmacy shall receive a compensation of five dollars a day for each day in which he is actually and necessarily engaged in attendance upon meetings of the board and in going to and returning from the place of meeting, and all necessary expenses incurred in attending such meeting; all such compensation and expenses and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor, upon the presentation of proper vouchers to be approved by a majority of said board, as in the case of state officers. The secretary of said board shall receive a compensation to be determined by said board not to exceed \$100 per annum.

All money received or collected by said board or any member or officer thereof during any month shall be turned over before the 10th day of the succeeding month, to the state treasurer together with a verified statement showing the sources from which such money was derived. The secretary of said board shall give a surety bond to be approved by and deposited with the auditor of the state, in the sum of one thousand (\$1,000) dollars. The cost of said bond shall be paid by the state. R&B §8456; L. '13, ch. 83.

TITLE 405—PRIVATE CORPORATIONS.

405 §3.

Change of residence made only by amended articles, *First National Bank v. Wilcox*, 72 or 73 W.

Agreement to incorporate and purchase shares must be definite as to all of the requisites of the proposed articles of incorporation, *Watson v. Bayless*, 71 W.

405 §21.

Corporate existence and payment of license fee may be shown by parol evidence, *Pacific Drug Co. v. Hamilton*, 71 W.

405 §23.

A general manager employed at a fixed salary for a fixed term of years may be removed by trustees without rendering the corporation liable for compensation for the remainder of the term, *Llewellyn v. Aberdeen Brg. Co.*, 65 W. 319.

Where the articles of a domestic corporation authorize it to hold real estate for specific purposes, a deed vests it with title, though the property is acquired for other purposes, *Milton v. Crawford*, 65 W. 145.

405 §33.

Substituted service outside state on non-resident stockholder gives court jurisdiction to try title to stock, *Gamble v. Dawson*, 67 W. 72.

Corporation not liable to a holder of a stock certificate which has not been transferred on books of corporation, *Whitfield v. Nonpareil Consolidated Copper Co.*, 67 W. 286.

405 §35.

Duty to call in stock subscriptions—receiver discharged, *Bergman Mfg. Co. v. Bergman*, 73 W.

405 §41.

Purchase by corporation of its own stock is fraud upon creditors, *Union Trust Co. v. Amery*, 67 W. 1.

It is a fraud upon creditors for stockholders to withdraw the assets of a corporation leaving debts unpaid, *Barnard Mfg. Co. v. Ralston Milling Co.*, 71 or 72 W.

405 §43.

Coal mining stockholders liable—payment by sale of other stock or property of less value, *Davies v. Ball*, 64 W. 292.

405 §59.

Corporation properly sold all its property, *Smith v. Flathead Coal Co.*, 66 W. 408.

405 §61.

Change of residence made only by amended articles, *First Nat. Bank v. Wilcox*, 72 or 73 W.

Must be read in connection with 405 §3, *First Nat. Bank v. Wilcox*, 72 W.

405 §65.

Does not apply to coal mining companies, the stockholders of which are liable to creditors upon unpaid stock subscriptions under 405 §43; *Davies v. Ball*, 64 W. 292.

405 §85.

Corporation acquires needed interest only, *Neitzel v. Spokane I. R. Co.*, 65 W. 100.

Railroad may condemn lands for new depot, *State ex rel. Nor. Pac. Ry v. Superior Court*, 68 W. 397.

405 §87.

The right to condemn a crossing over another carries the right to a particular crossing; and the court may provide that

condemnor build and maintain an over-head crossing for defendant, State ex rel. Union Lumber Co. v. Court, 70 W. 540. 405 §91.

Act constitutional, title sufficient, State ex rel. Great Northern Ry. v. Superior Court, 68 W. 572.

A railroad company may make a change in its location to correct an error in engineering, State ex rel. Sylvester v. Court, 64 W. 594.

405 §121.

A corporation organized for the purpose

of irrigation may condemn land for a storage reservoir, State ex rel. Golden Valley Co. v. Superior Court, 67 W. 556.

405 §153.

Easement to use stream may be obtained by 10-year use under notice of appropriation, Berryman v. East Hoquiam Co., 68 W. 657.

405 §175.

Improvement of the stream is sufficient to give right to charge a toll on logs floated thereon, without any handling thereon, Franck v. Pittock & Leadbetter Lum. Co., 67 W. 553.

AN ACT relating to the organization and to the management, regulation and control of building and loan and savings and loan associations and societies; providing penalties for the violation thereof; and repealing (405 §183) sections 3601 to 3638 inclusive of Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 19, 1913. Laws '13, ch. 110.

405 §183. Building, Savings and Loan Associations, Formation. §1. Ten or more persons, citizens of the State of Washington, may form a savings and loan association or savings and loan society for the purpose of accumulating the savings and funds of its members and lending its shareholders or others the funds so accumulated by making and acknowledging in quadruplicate and by filing as hereinafter required articles of incorporation specifying:

(a) The name of the proposed association, which shall terminate with the words "Savings and Loan Association," or "Savings and Loan Society."

(b) The city, town or village and the county wherein the principal place of business of the association is to be located and which must be within the State of Washington.

(c) The number of its directors, which shall not be less than seven nor more than fifteen. The first board of directors shall hold office for a term to be specified in said articles of not less than two, and not more than six months from the time said association is authorized to do business.

(d) The names, occupation and postoffice addresses of its first directors.

(e) The names, occupation and postoffice addresses of the subscribers to the articles of incorporation, and a statement of the number of shares which each has agreed to take. The matured value of the total number of shares, so subscribed shall be at least \$25,000.00.

(f) The limit of capital to be accumulated.

(g) The time of duration of said association, which shall not exceed fifty years.

Said articles shall be filed in the first instance in the office of the state auditor pending his approval thereof and of the by-laws of said association, as hereinafter provided for.

The articles of incorporation may be amended by a vote of at least two-thirds in number of the shareholders voting at any general meeting, or by a special meeting called for that purpose, and a copy of the resolutions making said amendment shall be certified in quadruplicate by the president and secretary under the seal of said corporation, and when so certified shall be so filed and kept the same as in the case of original articles, and from the time of said filing, said amendment shall have the same effect as if embraced in the original articles of incorporation: Provided, however, That no increase in the authorized capital shall be made unless three-fourths of the capital previously authorized has actually been issued.

405 §183.

Act repealed L. '13, ch. 110, §28.

Associations under former law subject to

U. S. corporation tax, Pacific Building & Loan Ass'n v. Hartson, 201 Fed. 1011.

405 §185. By-Laws. §2. Each association shall adopt by-laws for its government and therein describe the manner in which its business shall be transacted, which by-laws shall be in conformity with the provisions of this act, and the laws of this state, and at all times be open to the inspection of the

state auditor and the members of the association at its home office. All by-laws shall be subject to the approval of the state auditor before going into effect, and in case any provision in such by-laws shall be contrary to the provisions of this act, or to the laws of this state, or be detrimental to the interests of the members of such organization, or against public policy, he may, under the advice and consent of the attorney-general, require the same to be stricken out.

405 §187. **Certificate by State Auditor.** §3. Whenever said articles of incorporation are in due form and regularly executed and the by-laws have been duly approved as above required, the state auditor thereupon shall ascertain from the best source of information at his command the responsibility, character and general fitness of the incorporators. If he shall be satisfied concerning the several matters specified above, he shall, within a reasonable time, issue under his hand and official seal a certificate reciting in substance the filing in his office of the articles of incorporation and by-laws; that said articles and by-laws conform to all the requirements of law; that he has approved the same, and that he verily believes the incorporators are fit and proper to conduct the business of a savings and loan association as defined in this act and said by-laws. Said certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the state auditor and the other three shall be returned to the incorporators who shall forthwith file one copy thereof in the office of the secretary of state, one in the office of the auditor of the county in which the chief place of business of said association is located, and the other shall be retained by the association, whereupon the incorporation of said association shall be deemed complete.

405 §189. **Oath of Officers—Bond.** §4. Each officer and director, when appointed or elected, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such association, and will not knowingly violate the by-laws or any of the provisions of law applicable to such association. Each officer or agent having the custody of money or securities of an association shall be required to give bond to such association in an amount to be determined by the board of directors of such association commensurate with his liability.

405 §191. **Membership.** §5. The membership of the association shall consist of those persons holding shares therein. The by-laws may provide for an entrance, membership or withdrawal fee, but the total of such fees shall not exceed two dollars upon each share, and no other fee, penalties, fines or forfeitures shall be charged, except reasonable charges for expenses in closing loans, and for delinquency in making payments on stock and loans. The above provision shall not apply to dividends which may revert to the association as provided in section 7 of this act.

405 §193. **Capital—Shares—Preferred Stock.** §6. The capital of every such association shall consist of the accumulated payments made by its members and dividends credited thereon, and shall be represented by shares. Every share issued shall have a matured value of one hundred dollars. Every such association shall be either permanent or serial in character as provided by the terms of its by-laws. A permanent association may issue shares at any time and credit its dividends upon the pass books of its members. A serial association may issue shares in series and credit its dividends equally upon each share issued in such series. No shares of a prior series shall be issued after the issuing of shares in a later series, when issued upon the serial plan, except at the book value at the last distribution of profits plus the dues and accumulated earnings thereon since such distribution. Shares which have not been transferred to the association as security for the repayment of a loan shall be called free shares. Shares that have been so transferred shall be called pledged shares.

No preferred stock shall be issued, i. e., stock upon which a different or stipulated rate of dividends shall be guaranteed or paid before or regardless of the amount of dividends distributed to other classes of shares, neither shall any shares be issued which shall be exempt from bearing their pro rata portion of loss: Provided, however, That nothing herein contained shall be

held to prohibit any association already having reserve stock outstanding from continuing to have an equal amount of such stock outstanding, and from issuing, if necessary, additional reserve fund stock so as to equal five per cent. of the capital as defined in this section; and when so provided in its by-laws, such reserve fund stock may participate in all earnings equitably with the general stock and be chargeable with all real estate taken under foreclosure or otherwise in the adjustment of delinquent loans together with all direct losses of whatever nature sustained by the association in the general course of business and in consideration of such guaranty against loss, and when provided in the by-laws such stock may receive additional dividends, and such stock shall not be subject to withdrawal until all other classes of stock and all other liabilities of the association shall first have been liquidated, and any such association may agree to mature its other classes of stock at a fixed time, providing any deficiency arising therefrom shall be chargeable only to such reserve fund stock.

Any association may issue the shares classified below when so provided by its by-laws:

(a) Installment shares upon which a regular stipulated payment of dues shall be made at stated periods expressed in the by-laws.

(b) Savings shares, upon which payments shall be made in such sums and at such times as the holder thereof may elect until the shares reach their matured value or are withdrawn.

(c) Fully paid shares, upon which a single payment amounting to one hundred dollars per share shall be paid at the time of subscription.

(d) Juvenile shares. Any association may issue juvenile shares to, or in the name of, any minor which shall be held for the exclusive right and benefit of such minor and free from the control or lien of all other persons; and the accumulated savings on these shares together with the dividends credited thereon shall be paid to the persons in whose name the shares have been issued and the receipt or acquittance of such minor shall be valid and sufficient release and discharge to the association for such accumulated savings, together with the dividends credited thereon or any part thereof.

405 §195. **Dividends—Surplus.** §7. Profits and losses shall be ascertained and distributed semi-annually or annually. Dividends shall be taken from the net earnings of the association and, subject to the provisions of section 6 relating to reserve fund stock shall be distributed ratably to all classes of shares and to each share in proportion to the accumulation made thereon: Provided, That when stock is withdrawn within two years of its issuance, the withdrawing member shall receive only such proportion of the dividends as may be provided in the by-laws, but when such stock is more than two years old, the withdrawing member shall receive at least seventy-five per cent. of the dividends. The remaining dividends may revert to the undivided earnings. No dividends shall be credited or paid except by a vote of the board of directors duly entered upon the minutes, whereupon shall be recorded the vote by ayes and nays. It shall be lawful for the association, in addition to the contingent fund required by section 13 of this act, to hold in its fund of undivided earnings, such sum as the board of directors may from time to time deem necessary or wise: Provided, however, That when the undivided earnings, including the contingent fund, exceed fifteen per cent. of the dues and dividends credited to members, the board of directors shall declare such extra dividends in excess of the dividend regularly apportioned, as may be necessary to distribute among the shareholders the accumulation in excess of such authorized surplus.

405 §197. **Loans—Security—Bonds for Loans.** §8. For every loan made, except a loan from one association to another, a note or bond secured by first mortgage on improved real estate shall be taken, which security shall be conservatively worth at least twice the value of the loan. No mortgage loan shall be made except upon the report in writing of an appraiser or a committee of appraisers appointed by the board of directors, which report shall state the conservative value of the mortgage security. The directors in their discretion may also loan upon the security of the shares in the association to the amount of ninety per cent. of their withdrawal value, and may loan upon

or invest in bonds of the United States and of the State of Washington, and in such classes of bonds and warrants of the counties, school districts and other municipalities, as well as local improvement districts, in this state, as the state auditor may from time to time approve. Any association having a surplus for which there is no demand for loaning purposes or for the payment of withdrawals or matured shares, may loan the same to another domestic association, and such association may borrow from other associations or otherwise for loaning purposes or for the payment of withdrawals or matured shares: Provided, That no association shall borrow any amount or amounts which in the aggregate shall exceed twenty-five per cent. of the actual value of mortgages on deposit with the state auditor, as shown by the last preceding semi-annual statement of the borrowing associations, as provided in section 9 of this act. In borrowing said amount or amounts for the purposes specified, any such association may, at its election, borrow the same or any part thereof upon its debenture bonds, maturing on or before five years after date and bearing interest not exceeding six per cent. per annum, interest payable semi-annually. In no case shall any such bonds be issued when there are sufficient funds on hand or receivable in time to meet approved applications for loans or for the payment of maturing stock or withdrawals of stock. Such debenture bonds may be retired by action of the board of directors at any time after one year from date of issue, by the secretary of the association giving notice in writing sixty days or more prior to the next interest date to the recorded holders thereof, and on return of said retired bonds, together with the coupons attached, said holders shall receive their par value. At the expiration of said interest period, the bonds so called shall cease to draw interest. Whenever the state auditor shall deem any indebtedness incurred under the provisions of this section to be detrimental to the interests of the shareholders of any such association, he shall notify such association to reduce its indebtedness to such amount as he shall consider reasonable, giving such association such reasonable time as may be necessary to effect such reduction of indebtedness.

405 §199. **Deposit of Securities—Foreign Companies.** §9. Every savings and loan association heretofore or hereafter incorporated under the laws of this state, and governed by this act, shall deposit and keep with the state auditor, or with a duly chartered trust company of this state, approved by the state auditor, in trust for all its members and creditors, all mortgages and notes secured thereby, received by it in the usual course of business. When deposited with a trust company such company shall certify to the state auditor the possession of such securities, and the same shall not be surrendered without the authority or sanction of the state auditor. All associations except such as confine their business operations wholly to the county in which such associations are incorporated and adjoining counties, not having or owning mortgages to the amount of twenty-five thousand dollars, shall deposit with the state auditor additional securities to make with the securities so owned and deposited a total value of not less than twenty-five thousand dollars. Such additional securities shall consist of bonds of the United States and of the State of Washington, and such classes of bonds and warrants of the counties, school districts and other municipalities, as well as local improvement districts, in said state, as the state auditor may from time to time approve, and such additional securities may be withdrawn from time to time when mortgage securities of corresponding value shall be deposited, as provided in this act, or when other securities of like character are substituted therefor, and it shall be the duty of the state auditor, from time to time, to examine said associations to ascertain whether all of its securities are deposited, as required by this act: Provided, That all securities heretofore taken in any other state, territory or nation, by any association organized under the laws of this state, and subject to the provisions of this act, and there deposited under the laws of such state, territory or nation, with some officer, authorized to receive the same, shall not be deposited with the auditor of the State of Washington. But in every such case a certificate of such deposit shall be filed with the auditor of this state, and renewed annually, together with a statement verified by the affidavit of some officer of such association,

who has knowledge of the facts, showing all of the securities taken by such association, in such other state, territory or nation, at the time of the filing of such certificate; and in case any securities taken in any such state, territory or nation are not deposited there, then the same shall be deposited here, as required by this act.

Every foreign association doing business in this state and governed by this act shall deposit and keep with the auditor of this state, or with a duly chartered trust company of this state, approved by the state auditor, in trust for all its members and creditors in this state, all mortgages heretofore received by it in this state and now in effect, and all mortgages hereafter received by it in the usual course of its business in this state. Such securities shall be kept and dealt with by the state auditor or by such trust company in like manner as the securities deposited by savings and loan associations organized under the laws of this state. Every association governed by this act shall on or before the 1st day of February and on or before the 1st day of August in each year, file with the state auditor a verified statement of the total amount due to the association from the borrowers, upon the mortgage loans on deposit with the state auditor upon respectively the thirty-first day of December and the thirtieth day of June last preceding. Payments upon stock pledged to the association for a loan, which payments are accumulated for the purpose of meeting the loan at or prior to its maturity, shall be considered as payments upon such loan within the intent of this section.

405 §201. Interest on Deposited Securities. §10. All interest and dividends which may accrue on securities held by the state auditor or such trust company as provided for herein and all dues, or monthly payments, which may become payable on stock pledged as security for loans, the notes and mortgages for which are deposited in accordance with the provisions of this act, may be collected and retained by the association depositing such securities or mortgages, so long as such association remains solvent and faithfully performs all contracts with its members, and when any mortgage shall have been fully paid to said association the same shall be surrendered by said state auditor, or under his order, upon filing with him a certificate of the auditor of the county where the real estate is situated, to the effect that the satisfaction of said mortgage has been filed for record. Any mortgage upon which default has been made may be surrendered as aforesaid, upon filing with the state auditor an affidavit sworn to by the president and secretary of the association owning the same, stating that such mortgage is in default and that it is withdrawn for the purpose of foreclosure.

405 §203. Power to Hold Realty. §11. Any savings and loan association may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment, lien, or other incumbrance or in which it may have any interest, and may sell, convey, lease or mortgage the same at pleasure to any person or persons, but shall not otherwise acquire or deal in real estate: Provided, That any such association may acquire such real estate or a lease hold interest therein as may be necessary or convenient for a location for the transaction of its business: Provided further, That no such association shall use more than ten per cent. of its assets at any time in acquiring real estate for its business location: Provided further, That all real estate except that used for its business location shall be sold by said association within five years from and after the time that title thereto is acquired.

405 §205. No Commercial or Savings Accounts. §12. No savings and loan association shall carry any demand, commercial or checking account and no such association shall receive any savings account or any sum of money on deposit without issuing shares of stock for the same.

405 §207. Contingent Fund. §13. At each periodical distribution of profits, unless such association already has issued paid up reserve fund stock equal to five per cent. of the amount credited to members to which losses may be chargeable as provided in section 6 of this act, the board of directors shall reserve and carry to a contingent fund, a sum equal to at least five per cent. of the net earnings during the period since the last previous dividend was declared, until such contingent fund shall be equal to at least five per cent. of the amount credited to members. The directors may at any time carry to

such contingent fund any further portion of the undivided earnings that in their discretion may seem wise, except as herein provided. Losses of the association may be paid therefrom, and whenever the contingent fund is reduced below five per cent. the board of directors shall at each periodical distribution of profits carry to such contingent fund at least five per cent. of the net earnings during the period since the last dividend was declared until such contingent fund shall again be equal to at least five per cent. of the amount credited to members.

405 §209. **Losses Assessed Against Shares.** §14. Whenever the losses of an association exceed the contingent fund, or the reserve fund, if reserve fund stock has been issued as provided in section 6 of this act, they may be charged against the undivided earnings, if any, and in the event that they also exceed such undivided earnings, shall be charged pro rata against all classes of shares according to the withdrawal value thereof.

405 §211. **Expenses, How Paid.** §15. The expenses of such association shall be paid from its earnings, and no deduction from dues shall be made either directly or indirectly for that purpose. No such association shall pay or be or become liable to pay either directly or indirectly in the course of any calendar year as salaries, commissions, fees or other compensation to its officers, directors, auditor, attorneys, agents, clerks and all other employes and for rent, advertising, and all other operating expenses, sums of money the aggregate of which shall exceed two and one-half per cent. of the average amount of assets of such association during such year. The term "operating expenses" as used in this connection shall not be construed to include membership fees, taxes, assessments, repairs or insurance on real estate or commissions on the sale of real estate, or on the placing of loans, or any interest which the association may have paid or become liable to pay, proper legal charges for searching titles or the preparation of legal papers, expenses of foreclosure suits or other bona fide litigation, nor charges for examinations made by the direction of the state auditor. The provisions of this section, in so far as they limit the expenditure for expenses, shall not apply to any association whose accumulated capital is less than forty thousand dollars: Provided, however, That the annual expenses of every such latter association shall not exceed a total of one thousand dollars. The provisions of this section shall apply as well to foreign as to domestic corporations doing business under the permission and certificate of the state auditor and said auditor shall not renew such permission or issue such certificate to any corporation that shall have violated the provisions of this section.

405 §213. **Withdrawal of Shares.** §16. Shares shall not be withdrawn until after a lapse of three months from the time of issuance of such shares and not then except at the option of the association, and after one day's written notice of intention to withdraw such shares shall have been given subsequent to the expiration of such three months; but shares may be withdrawn at any time after one year from the time of issuance and after one day's written notice of such withdrawal has been given to the association. The withdrawing shareholder shall be paid the amount of the withdrawal value of the shares, as shown by the last prior distribution of profits and as determined by the by-laws, together with all the dues paid thereon since such distribution: Provided, That upon withdrawal of shares pledged to the association for a stock loan or stock loans, the association shall first deduct therefrom the indebtedness due the association. Withdrawals shall be paid in the order of their filing, except as hereinafter provided, and it shall be the duty of the secretary or other officer discharging such duties to enter upon each notice the order and date of such filing. Except as hereinafter provided, not more than two-thirds of the receipts of the association in any month shall be applied to the payment of withdrawals and matured shares without the consent of the board of directors. Whenever an application for withdrawal shall have been on file or the payment of matured shares demanded and either shall have remained unpaid for a period of six months, all the receipts of the association in any month from dues, loans, repaid, and the proceeds of all other investments, shall, after the payment of expenses and general indebtedness, be applied toward the payment of withdrawals and matured

stock; and the board of directors, or the state auditor, in his discretion, may direct that withdrawals be paid upon a ratable and proportionate basis. After filing the notice of withdrawal provided herein, the withdrawing member shall be entitled to the dividends credited to the same class of shares, until the final payment of his shares is made; and membership in the association shall remain unimpaired so long as any accumulation remains to his credit. No officer, director, attorney, clerk or agent of such association, and no person in any way interested or concerned in the management of its affairs shall discount or directly or indirectly purchase a share of any such association, whether filed for withdrawal or not, except by payment therefor of the withdrawal value of such share as determined herein. The board of directors of any association may retire all classes of free shares by enforcing withdrawals of the same: Provided, That the by-laws shall clearly state the manner in which such withdrawals may be enforced: And provided also, That the holders thereof shall be paid the full value of the shares, including, in such case, their proportion of the contingent fund.

405 §215. **Taxation, How Levied.** §17. Shares held by members shall be exempt from taxation and the association itself shall not be taxable, except that its tangible personal and real property shall be taxed as other tangible personal and real property is taxed.

405 §217. **Reports to State Auditor.** §18. On or before the first day of September in each year every savings and loan association doing business in this state shall deposit with the state auditor a report of its affairs and operations for the year ending on the 30th day of June immediately preceding. Such report shall be verified under oath by the president and secretary or by three directors of the association, and shall contain such information as the state auditor from time to time request. Upon filing such report, there shall be paid to the state auditor for the state general fund, in lieu of all other corporation fees or licenses, a fee determined as follows: If the assets of the association as shown by said report amount to fifty thousand dollars or less, a fee of ten dollars; if more than fifty thousand dollars and less than one hundred thousand dollars a fee of twenty dollars; if more than one hundred thousand dollars and less than two hundred fifty thousand dollars, a fee of thirty dollars; if more than two hundred fifty thousand dollars and less than five hundred thousand dollars, a fee of forty dollars; if more than five hundred thousand dollars and less than one million dollars, a fee of sixty dollars; and if more than one million dollars, a fee of one hundred dollars. If such association shall fail to furnish to the auditor of the state any report required by this act, at the time so required, it shall forfeit the sum of twenty-five dollars per day for every day such report shall be delayed or withheld; and an action shall be started in the name of the state to recover such penalty and the same shall be paid into the treasury of the state. After receiving such report, the auditor, if satisfied that such association has complied with all the provisions of this act and is entitled to do business in this state, shall issue a certificate stating the compliance with such provisions, and that such association is entitled to do business in this state, which certificate shall be in force for the period of one year unless sooner revoked.

405 §219. **Supervision by State Auditor.** §19. The state auditor shall have supervision of all such associations doing business in this state, and shall be charged with the execution of the laws of this state relating thereto. At least annually but not oftener than twice a year except in cases of extreme necessity he shall make or cause to be made an examination into the affairs of all such associations doing business in this state. Such examinations shall be made by an inspector of savings and loan associations to be appointed by the state auditor, and who shall hold office during his pleasure. Such inspector shall be paid for the time actually spent in examining the affairs of any association at the rate of eight dollars per diem and railroad fare. Such compensation shall be paid by the association and where several associations are examined in the course of a single trip made by the examiner, the railroad fare shall be equitably proportioned by the state auditor among the associations so examined. All examinations made by such inspector shall be full and complete, and in making the same he shall have full access to, and

may compel the production of all books, papers, moneys, and records of the association under examination, and may administer oaths to and examine the officers of such association or any person connected therewith as to its business and affairs, and any wilful false swearing shall be deemed perjury and be punishable as such: Provided, Whenever by the laws of the state under which any foreign association is organized, annual examinations of such association are required and are made pursuant thereto, then such foreign association shall not be examined hereunder; Provided, Such foreign association shall furnish to the auditor of this state annually a certificate of the proper officer of such other state that he has made an examination pursuant to the laws of such other state, and that the affairs of such association are in accord with the laws of such other state: And provided further, That the auditor of this state may, whenever he deems it advisable, cause examination of such foreign association to be made as is required in the case of associations organized under the laws of this state.

405 §219.

one dissolved—public policy, State ex Tan-

New company organized to take over old ner v. Northwestern Inv. Co., 70 W. 381.

405 §221. **Failing Condition, Procedure.** §20. Whenever it shall appear to the state auditor that the affairs of any savings and loan association are in an unsound condition or that it is conducting its business in an unsafe or unlawful manner, the state auditor shall at once notify the board of directors of such association, giving them twenty days in which to restore its affairs to a safe and sound condition or to discontinue its illegal practices. If after twenty days such restoration shall not have been made, or such illegal practices shall not have been discontinued, the state auditor shall direct the inspector of savings and loan associations to take possession of all books, records and assets of every description of such association and hold and retain the possession of same pending the further proceedings herein specified. Should the board of directors, secretary or person in charge of such association refuse to permit the said inspector to take possession as aforesaid, the state auditor shall communicate such fact to the attorney general, whereupon it shall become the duty of the attorney general at once to institute such proceedings as may be necessary to place such inspector in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid said inspector shall prepare a full and true statement of the affairs and condition of such association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of his trust. Said inspector shall be required to execute to the state auditor a good and sufficient bond in a sum required by the state auditor conditioned upon the faithful discharge of his duties as custodian of such association, which said bond shall be approved by the state auditor, and the expense of which shall be borne by the association under examination.

When the condition of such association has been fully ascertained, and it shall appear that the affairs of said association are in fact in an unsound condition, or that it is in fact continuing its business in an unsafe or unlawful manner, the state auditor shall report the facts to the attorney general and it shall thereupon become the duty of the attorney general to institute proceedings in the superior court of the proper county for the appointment of a receiver and for the dissolution of such association, or such other proceedings as the occasion may require.

405 §221.

sound may be shown by parol testimony,

Report of the state auditor to the attorney general that the association was un- State ex rel. Tanner v. Northwestern Inv. Co., 70 W. 381.

405 §223. **Removal of Action, Etc., Forfeits Rights.** §21. Any savings and loan association organized under the laws of any other state or territory that shall remove any action that shall be commenced against it in a court of this state to a United States court, or that shall fail to pay any judgment rendered against it upon a suit in any court in this state within sixty days after the rendition of final judgment in such case, or that shall fail to make

reports to the state auditor as provided in this act, or to do any other act to be done or performed as required by law, and after the continued failure to do such act for twenty days after notice in writing from the state auditor of such failure, shall have no right or authority to do or transact any further business within the limits of this state, and the state auditor shall thereupon cause notice of the termination of such authority to do business to be mailed to such association, and to be published in some newspaper of general circulation at the capital of the state, and shall communicate the facts to the attorney general of this state, who shall institute such proceedings in the matter as the case may require: Provided, Any such corporation may be again authorized to commence business upon such terms as the state auditor may deem just and proper, and upon full compliance with the provisions of this act.

405 §225. **Premature Sale of Stock—Penalty.** §22. Any officer, director or agent of any savings and loan association or any other person who shall sell or issue or knowingly cause to be sold or issued to any resident of this state, any stock of said association while said association does not have on deposit with the state auditor as required by this act, securities of the value and at the time herein prescribed, or while such association shall not have the certificate of the state auditor authorizing it to do business as herein prescribed shall be guilty of a gross misdemeanor.

405 §227. **Former Companies Must Reorganize.** §23. After the passage and approval of this act, it shall be unlawful for any person, association or persons or domestic associations not already organized and doing business under (405 §83) sections 3601 to 3638, both inclusive, of Remington & Ballinger's Codes and Statutes of Washington, to conduct a business in the form or of a character similar to that authorized by this act without first incorporating under this act. After the passage and approval of this act no foreign association not already lawfully engaged in the State of Washington in the business of a savings and loan association shall be permitted to conduct such a business in this state, and hereafter no savings and loan associations organized under the laws of this state not already lawfully engaged in the business of a savings and loan association outside of the state of Washington shall be permitted to engage in business outside of this state: Provided, That no such association shall loan on property outside of this state more than the aggregate of the amount from time to time standing to the credit of members outside of the state.

405 §229. **Limitation on Statements in Sale of Stock.** §24. It shall be unlawful for any savings and loan association to make, publish, or circulate any advertisement, sign, circular or statement intended or calculated to induce persons to purchase stock of such association in the belief that such stock is subject to withdrawal on demand or that a stipulated or agreed rate of interest or dividend is payable thereon, except as provided in section 6.

405 §231. **Names of Companies Restricted.** §25. After the passage and approval of this act, no person, association of persons, or corporation conducting a business not in the form and of a character similar to that authorized by this act shall have or continue to use for a part of its title or corporate name any combination of two or more of the following words, to-wit: "building", "savings", "loan", "home", "association", or "society".

405 §233. **Law Is Exclusive.** §26. The powers, rights, duties, privileges and obligations of every association heretofore or hereafter organized and doing business in the form or of a character similar to that authorized by this act, shall be governed, controlled, construed, extended, limited and determined by the provisions of this act, to the same extent and effect as if said association had been organized and incorporated under or pursuant to the provisions of this act, and the articles of incorporation, by-laws, and rules of every such association heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where such articles of incorporation, by-laws or rules are inconsistent with the provisions of this act; except that the obligations of any existing association, whether between such association and its shareholders or any one of them or any other person or persons or any valid

contract between the shareholders of such association existing at the time this act takes effect shall not be in any way impaired by the provisions of this act; and with such exceptions every savings and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this act, notwithstanding anything to the contrary in its articles of incorporation, by-laws or rules. All obligations to any such association heretofore contracted shall be enforceable by it and in its name, and demands, claims and rights of action against any such association may be enforced against it as fully and completely as they might have been enforced before.

405 §235. **Penalties.** §27. Every officer, director, agent or other employee of any savings and loan association, who shall wilfully violate or fail to comply with any of the provisions of this act, shall be guilty of a misdemeanor.

405 §237. **Time Act Takes Effect.** §29. This act shall take effect July first, 1913.

405 §327.

Is not substituted by 77 §13—Gandy act, *Dolan v. P. S. L. & P. Co.*, 72 W.

Grants right to cities to authorize building electric railway on elevated trestle, *State ex rel. Ford v. Supreme Court*, 67 W. 10.

405 §347.

No fee if no capital stock, *Mutual Home Ass'n v. Joe's Bay Co.*, 73 W.

Though plaintiff failed to allege payment of fee, it may resist defendant's counterclaim, *North Star v. A.-Y.-P.*, 68 W. 457.

Does not apply to corporations organized for fraternal purposes, *Ellensburg I. O. O. F. v. Collins*, 68 W. 94.

405 §349.

Corporation dissolved trustee may conserve property for creditors, *Soderberg v. McRae*, 70 W. 235.

Notice of injury by employee to trustee in charge after dissolution of corporation, valid, *Jones v. Francis*, 70 W. 676.

Payment of license fee must be shown

in an action by a foreign corporation maintaining a superintendent at a port in the state to care for its vessels, *Boston Tow Boat Co. v. Sesnon Co.*, 64 W. 375.

Plaintiff disqualified judgment may be had for counterclaim, *Boston Tow Boat Co. v. Sesnon Co.*, 199 Fed. 445; amended complaint may show fee paid, *Wilson Case Lum. Co. v. Mountain Timber Co.*, 200 Fed. 181.

Payment of license fee may be proved by evidence other than a certificate from the secretary of state, *Miller & Sons v. Simmons*, 67 W. 294; *Pacific Drug Co. v. Hamilton*, 71 W.

Action abates till proof of payment—real proof admissible, *Eastman & Co. v. Watson*, 72 W.

405 §439.

Act valid, and supplants prior laws, *State v. Howell*, 67 W. 377.

405 §443.

Corporation dissolved for non-payment of fees, trustee may conserve property for creditors, *Soderberg v. McRae*, 70 W. 235.

AN ACT providing for the formation and carrying on of co-operative associations and providing for the rights, powers, liabilities and duties of the same. Approved February 28, 1913. Laws '13, ch. 19.

405 §447. **Co-operative Associations, Formation.** §1. Any number of persons, not less than five, may associate themselves together as a co-operative association, society, company or exchange for the transaction of any lawful business on the co-operative plan. For the purposes of this act the words "association," "company," "exchange," "society" or "union" shall be construed the same.

405 §449. **Articles—Contents.** §2. Every association formed under this act shall prepare articles of association in writing, which shall set forth:

1. The name of the association. 2. The purpose for which it was formed. 3. Its principal place of business. 4. The term for which it is to exist, which shall not exceed 50 years. 5. The amount of capital stock, the number of shares and the par value of each share.

405 §451. **Filing.** §3. The original articles of association organized under this act or a true copy thereof verified to be such by the affidavits of two of the signers thereof, shall be filed with the secretary of state. Whenever a certified copy of the same accompanied by a certificate of the secretary of state showing that the same has been filed in his office, is filed with the county auditor of the county in which is located the principal place of business of said association, the said association shall be deemed to be legally organized.

405 §453. **Filing Fees.** §4. For filing articles of association organized under this act there shall be paid to the secretary of state the sum of twenty-

five dollars and for the filing of an amendment of such articles there shall be paid the sum of ten dollars. For recording such articles of association or an amendment thereto, the county auditor shall charge the sum of fifteen cents for each 100 words thereof, and fifteen cents for filing and indexing the same.

405 §455. **Trustees—Officers.** §5. Every such association shall be managed by a board of not less than three trustees. The trustees shall be elected by and from the stockholders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office during the term for which they were elected and until their successors are elected and qualified; but a majority of the stockholders shall have the power at any regular or special meeting, legally called for that purpose to remove any trustee or officer for cause, and fill the vacancy. The officers of every such association shall be a president, one or more vice-presidents, a secretary and a treasurer who shall be elected annually by the trustees. Each of said officers must be a member of the association. All elections shall be by ballot.

405 §457. **Amendment of Articles.** §6. The articles of association may be amended by a majority vote of the stockholders at any regular stockholders' meeting or at any special stockholders' meeting called for that purpose, on twenty days' written notice being given to the stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: Provided, The amount of the capital stock shall not be diminished below the amount of the paid up capital stock at the time such amendment is adopted. Within thirty days after the adoption of an amendment to its articles of association, the association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state and of the county auditor of the county where its principal place of business is located.

405 §458. **Business Authorized.** §7. An association created under this act, being for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the co-operative plan.

405 §459. **Stock Limit—Vote.** §8. No stockholder in any such association shall own more than one-fifth of the stock of the association, except as hereinafter provided. No stockholder at any meeting shall be entitled to more than one vote.

405 §461. **Stock in Other Associations.** §9. At any regular meeting or any regularly called special meeting at which at least a majority of all the stockholders shall be present, or represented, an association organized under this act may by a majority vote of the stockholders present or represented, subscribe for shares and invest its reserve fund or any part thereof in the capital stock of any other co-operative association.

405 §463. **Purchase of Other Associations.** §10. Whenever an association organized under this act shall purchase any stock of another association or the interest or any part thereof of any person or persons, firm or partnership engaged in any lawful business as defined in section 7 of this act, it may pay for the same in whole or in part by issuing to the selling association or person, firm or partnership, shares of its capital stock to an amount which at par value, would equal the fair market value of the stock or interest so purchased and in such case the transfer to the association of such stock or interest so purchased at such valuation shall be equivalent to payment in cash for the shares of stock so issued.

405 §465. **Stock Held in Trust.** §11. In case the cash value of such stock or interest so purchased exceeds one-fifth of the par value of the purchasing association, the trustees of the purchasing association are authorized to hold the shares in excess of one-fifth of the par value of the purchasing association, in trust for the vendor and dispose of the same to such person or persons and within such time as may be mutually agreed upon by the parties in interest, and shall pay the proceeds thereof as currently received to the former owners thereof. Certificates of stock shall not be issued to any subscriber until fully paid for, but the by-laws of the association may allow subscribers to stock to vote as stockholders: Provided, That one-fifth of the stock subscribed for has been paid for by such subscriber.

405 §467. **Vote by Mail.** §12. At any regular, called, general or special meeting of the stockholders, a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing: Provided, He has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of same is forwarded with and attached to the vote so mailed by him.

405 §469. **Earnings—Apportionment.** §13. The trustee shall apportion the net earnings by first paying dividends on the paid up capital stock at a rate not exceeding eight per cent per annum; then setting aside not less than ten per cent nor more than twenty-five per cent of the remainder annually of the net profits for a reserve fund and the remainder of said net profits by dividends proportioned upon the amount of business transacted with said association and proportioned upon the wages and salaries of employees: Provided, That non-shareholders shall only be entitled to one-half as much dividends from said net profits as shareholders: And provided further, That no dividend shall be paid out or declared on any business transacted with the association by any person, persons firm or corporation engaged in the buying, selling or handling of agricultural products for profit or to any sale to said association by any person or persons, firm or corporation engaged as a wholesaler or jobber in the distribution of manufactured products. Dividends remaining uncalled for six months after the same have been declared shall revert to the association.

405 §471. **Dividends.** §14. The profits or net earnings of such association shall be distributed to those entitled thereto at such time and in such manner not inconsistent with this act as its by-laws shall prescribe, which shall be as often as once a year.

405 §473. **Annual Reports.** §15. Every association organized under the terms of this act shall, annually on or before the 1st day of March of each year, make a report to the secretary of state; such report shall contain the name of the company, its principal place of business in this state and a general statement as to its business, showing the total amount of business transacted, the amount of capital stock subscribed for and paid in, the number of stockholders, the total expenses of operation, the amount of its indebtedness or liability and its profits and losses.

405 §475. **Associations Heretofore Organized.** §16. All co-operative associations heretofore organized and doing business under prior statutes, or which have attempted to so organize and do business shall have the benefit of all the provisions of this act and be bound thereby on filing with the secretary of state signed and sworn to by the president and secretary, manager or other officer managing said business, to the effect that said co-operative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by the provisions of this act. No association organized under this act shall be required to do or perform anything not specifically required herein in order to become an association or to continue its business as such.

405 §477. **Use of "Co-operative" Limited by this Act.** §17. No corporation or association organized or doing business for profit in this state shall be entitled to use the term "co-operative" as a part of its corporate or other business name or title, unless it has complied with the provisions of this act; and any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any stockholder or any association legally organized hereunder.

405 §479. **When to Do Business—Liability.** §18. No co-operative association organized under the provisions of this act shall be permitted to do business until three-fourths of the capital stock shall have been subscribed for and one-fourth of the capital stock of said association shall have been paid in to said association. The liability of each stockholder shall be limited to the amount remaining unpaid on his subscription to the capital stock of said association.

405 §481. **By-laws.** §19. Any association formed under this act may pass by-laws to govern itself in the carrying out of the provisions of this act which

are not inconsistent with the provisions of this act.

405 §483. **Act Saved From Courts.** §20. If any section or part of a section of this act shall for any cause be held unconstitutional such fact shall not affect the remainder of this act.

TITLE 409—PROBATE PROCEDURE.

409 §1.

Title may be tried in probate and costs allowed, *Sloan v. West*, 63 W. 623.

409 §33.

Will may be revoked by a writing made with the solemnity of a will, though it disposes of no property, *In re Pierce's Est.*, 63 W. 437.

409 §51.

Delay not excusable since immediate proof might have been made under 409 §§95, 105, *In re Greenleaf's Estate*, 69 W. 478.

409 §73.

Where a will has been filed the court may probate it without formal petition, *In re Pierce's Est.*, 63 W. 437.

409 §77.

Widow entitled to administration at domicile, *Gamble v. Dawson*, 67 W. 72.

The domicile of the wife follows that of the husband, *Bucholz v. Bucholz*, 63 W. 213.

409 §95.

Formal petition for probate not necessary, *In re Pierce's Est.*, 63 W. 437.

409 §115.

Will contest survives, *Ingersoll v. Gourley*, 72 W.

Sons fidelity to mother to his advantage is not undue influence, *Converse v. Mix*, 63 W. 318.

Brother of testatrix is person interested, *In re Siebs Estate*, 70 W. 374.

409 §129.

Two witnesses must testify of their own knowledge, and not merely hearsay, *In re Needhams Estate*, 70 W. 229.

"Witness" means a person who is sworn and testifies in a case, and not a document, *In re Needham's Estate*, 70 W. 229.

409 §171.

Husband should not be denied administration because he claims property as his separate estate, *Buscher v. Buscher*, 72 W.

Right of creditor to appointment of administrator depends on the nonaction of other classes given a preference right, *Larson v. Stewart*, 69 W. 223.

The right of a surviving spouse to administer waived by failure to apply within 40 days, *Koloff v. C. M. & P. S. Ry.*, 71 W.

401 §259.

Applies to guardian's bond, *Newberry v. Wilkinson*, 190 Fed. 62; affirmed 199 Fed. 673.

409 §283.

Powers of sale etc. under will—solvency determined by inventory, *Fulmer v. Cable*, 73 or 74 W.

Does not give jurisdiction to order an allowance to a widow upon the settlement of an estate under a nonintervention will, *In re Guy's Estate*, 63 W. 167.

409 §315.

Does not apply where one comes into

possession under claim of ownership, *Jackson v. Lamar*, 67 W. 385.

409 §325.

Notice to attorney is good for order setting aside realty for support of the family, *Fairfax v. Walters*, 66 W. 583.

Homestead granted the widow from community property vests in her the title in fee, *Fairfax v. Walters*, 66 W. 583.

409 §327.

Court may classify claims for caring for the widow during her fatal illness pending the administration of the husband's estate, and order the claims paid, as allowances to the widow, *In re Bell's Est.*, 70 W. 498.

409 §335.

Notice is from first publication—number of publications properly ordered after first was made, *Seattle Nat. Bank v. Dickinson*, 72 W.

An order may be taken any time before final settlement, *Seattle Nat'l Bank v. Dickinson*, 72 W.

Notice bars claims in federal court of equity—claim against guardians' bond failed, *Newberry v. Wilkinson*, 190 Fed. 62; affirmed 199 Fed. 673.

"Claim" includes right of ward against deceased guardian, *Newberry v. Wilkinson*, 199 Fed. 673.

409 §343.

Claim held not presented—payments by executors does not waive, *Seattle Nat. Bank v. Dickinson*, 72 W.

409 §349.

Complaint must be filed within three months after rejection of a claim, *Farmers Bank v. Lilly*, 66 W. 309.

409 §353.

Applies to mechanic's lien claims, *Crowe & Co. v. Adkinson Construction Co.*, 67 W. 420.

The presentation of a claim to a special administrator is not sufficient, *Ward v. Magaha*, 71 or 72 W.

Temporary absence of or promises by executor will not excuse failure to make actual presentation, *Seattle Bank v. Dickinson*, 72 W.

409 §363.

Community judgment properly filed as claim in probate of wife's estate, *First Nat. Bank v. Cunningham*, 72 W.

409 §489.

A railroad fill upon a street to the damage of an abutting owner is a trespass, for which the right of action survives, *Seward v. S. R. & S. Ry.*, 64 W. 516.

409 §497.

Widow has no interest in action as an heir, although the property conveyed was community personalty, *Daniels v. Spear*, 65 W. 121.

Rights of executor are same as though the creditors were prosecuting the action

against the fraudulent transferee during the lifetime of the deceased, *Daniels v. Spear*, 65 W. 121.

409 §541.

Strict compliance as to notice not necessary where actual notice was given and parties appeared and asked for a continuance, *In re Bell's Est.*, 70 W. 498.

409 §549.

This section warrants review of pay of administrator on appeal, *In re Doane's Estate*, 64 W. 303.

409 §637.

Escheats go to state school fund, later act, 175 §13.

409 §639.

Where intent of testator not clear he is presumed to deal only with his interest, *Herrick v. Miller*, 69 W. 456.

409 §665

Escheats go to state school fund, later act, 175 §13.

409 §665.

Surviving undivorced husband is wife's heir, although they have been living apart for three years, *In re Sieb's Est.*, 70 W. 374.

409 §687.

Appearance by the prosecuting attorney unnecessary, if the incompetent is represented by an attorney of his own selection, *In re Ervay*, 64 W. 138.

409 §721.

Provisions mentioned applied to guardian's bond, *Newberg v. Wilkinson*, 190 Fed. 62; affirmed 199 Fed. 673.

409 §781.

A proceeding not invalid because conducted without notice to the ward, *Jorgenson v. Winter*, 69 W. 573.

TITLE 413—PUBLIC EDUCATION.

413 §1.

Title sufficient—act constitutional, *State*

ex rel. School Dist. v. Superior Court, 69

W. 189.

Supplementary—AN ACT creating a State School for the Deaf and a State School for the Blind. Approved February 24, 1913. Laws '13, ch. 10.

413 §170. **Schools Separated.** §1. Upon the taking effect of this act the State School for the Deaf and Blind at Vancouver shall be divided into two institutions, one for the blind to be known as the State School for the Blind, and one for the deaf to be known as the State School for the Deaf, each of said institutions to be located at Vancouver. The state board of control shall appoint a superintendent for each institution. All provisions of law relating to the State School for the Deaf and Blind shall, so far as the same are applicable, govern the management of the State School for the Deaf and the State School for the Blind hereby created.

Supplementary—AN ACT providing for changing the name of the State Institution for Feeble Minded to State School and Colony, for the Government of the same and repealing all acts and parts of acts in conflict with the provisions of this act. Approved March 24, 1913. Laws '13, ch. 173. Section 1 vetoed.

413 §194. **Admission, Act. 1913.** §2. The (Institution) State School and Colony shall be free to residents of the State of Washington under the age of twenty-one years who are feeble minded, idiotic or epileptic, or who are physically defective to such extent as to prevent them from being educated in the common schools; Provided, That they are free from contagious diseases. Admission may be applied for as follows:

First. By the father or mother, if father and mother are living together. Second. If father and mother are not living together, then by the one having the custody of the child. Third. By the guardian duly appointed. Fourth. By the superintendent or other officer having charge of any institution or asylum where children are cared for. Fifth. By county superintendents of schools and boards of county commissioners. Sixth. By juvenile courts under an order of commitment. Under items three, four, five and six consent of parents is not required.

§3. The form of application for admission into said (Institution) State School and Colony and the necessary checks against improper admission shall be such as the board of control may prescribe and each application shall be accompanied by answers under oath to such interrogatories as the said board shall prescribe, and county superintendents of schools are hereby authorized to administer oaths in such cases.

413 §195. **Duties, County Superintendents'.** §4. County superintendents

of schools shall cause to be filled out the prescribed blank applications for admission for such children in their respective districts, who by reason of mental or physical defects are incapable of receiving instruction in the common schools of this state, or whose habits are such as to render them unfit for companionship with normal children, except such as in the judgment of the county superintendent are receiving proper care and education and are being safely kept at home. All applications for admission of defectives under twenty-one years of age except those committed by the juvenile court, shall be made through the county superintendent of schools, who shall keep a record of such and certify to the board of county commissioners all applications that are accepted by the superintendent of the (Institution) State School and Colony.

413 §196. **Clerks of Districts—County Commissioners.** §5. It shall be the duty of the clerks of all school districts in the State of Washington, at the time for making the annual reports, to report to the school superintendent of their respective counties, the names and addresses of all feeble minded youths residing within their respective districts, who are under the age of twenty-one years. And each county school superintendent shall make a full report of such defective youth to the county commissioners of their respective counties at their regular August meeting of each year, transmitting a copy of said report to the state board of control and the superintendent of the State School and Colony.

413 §197. **Parents Shall Send Child.** §6. Upon notification by the superintendent of the (Institution) State School and Colony, of acceptance of application for admission, it shall be the duty of the parents or the guardian of such defective youth to send them to said institution and the county superintendent of schools shall take all action necessary to enforce this section of this act.

413 §198. **Expense of County.** §7. If it appears to the satisfaction of the county commissioners that the parents of any such defective youth who have been accepted for admission are unable to pay the expense of sending them to the said institution, it shall be the duty of the commissioners to send them at the expense of the county.

413 §199. **Adults Recommitted.** §8. Inmates arriving at the age of twenty-one years while in the institution, and who, in the judgment of the superintendent, are unfit to be discharged, shall be reported to the superior court of competent jurisdiction, which court, after due examination and finding the case a proper subject for institutional care, may issue an order of commitment to said (Institution) State School and Colony.

413 §199a. **Adults Under Fifty Years.** §9. Adults under fifty years of age who may be determined to be feeble minded, and who are of such inoffensive habits as to make them proper subjects for classification, education and discipline in an institution for feeble minded, may be admitted free upon pursuing the same course of legal commitment as governs admission to the hospitals for insane; but no insane persons, or those who are proper subjects for county poor farms, hospitals or asylums, or cases of senile dementia, shall be admitted to the (Institution) State School and Colony.

413 §200. **Discharges—Paroles.** §10. The superintendent of the (Institution) State School and Colony shall detain inmates admitted to the institution until satisfied that they are in normal condition and safe and competent to be at large, or that they can receive proper care and education at the home of relatives, or in some other home or institutions. In such cases, or for other good and sufficient reasons, he may grant discharges; or, in his discretion, permit inmates to visit their homes for stated periods, upon request of parents or guardians approved by the county superintendent of schools.

413 §201. **Parents May Pay Expense.** §11. Any parent or guardian who may wish to enter a child in said institution and pay all expenses of care and maintenance, may do so under terms, rules and regulations prescribed by the board of control.

413 §202. **Clothing Expense.** §12. When not otherwise provided, the superintendent shall provide the inmates with suitable clothing, the actual cost of which shall be a charge against the parents, guardian or estate of such

inmates; and in the event that such parent, guardian or estate is unable or is insufficient to provide or pay for such clothing, the same shall be provided by the state. The board of county commissioners, county superintendent of schools, or other authorized officers, in recommending an applicant for admission to said institution, shall state whether or not such person has an estate of sufficient value, or a parent of sufficient financial ability to defray the expense in whole or in part for such clothing. The expense of personal clothing provided by the state shall be a charge against the parents or estate of inmates if such parents or estate are financially able to pay the same. after proper investigation, the state may proceed against the party or parties or estate and collect the same through the courts as other accounts are collected.

413 §203. **Segregation Required.** §13. The future construction of the buildings of the (Institution) State School and Colony shall be fire-proof as far as possible. They shall be in two groups for each sex; one for the educational and industrial department and one for the custodial or colony department, with such subdivisions as will best classify and separate the many diverse forms of the infirmity to be cared for.

413 §204. **School Year—Courses.** §14. A school department shall be maintained from September 1st to June 1st each year, for the benefit of those who can be educated along lines best suited to individual capabilities. The processes of agricultural training shall receive consideration and the employment of the inmates in the care and raising of stock, in dairying and in the cultivation of fruits, vegetables, etc., shall be made tributary as far as possible to the maintenance of the institution. Manual training shall also be carried on along such lines as will be of greatest benefit to both the inmates and the institution.

413 §204a. **Penalties.** §15. Any parent, guardian or proper officer who shall, without proper cause, fail to carry into effect the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any justice of the peace or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars (\$200), in the discretion of the court.

413 §257.

Note on page 1690 of Code.

413 §279.

Districts consolidated cannot join union high school—413 §319, State ex Bell v. Thaanum, 74 W.

Requires a petition signed by five heads of families of two or more adjoining school districts, and not five heads of families from each separate district of which the consolidated district is to be composed, State ex rel. Harris v. Ward, 69 W. 342.

413 §291.

Where two school districts are each indebted in excess of two per cent and are consolidated and the consolidated district issues bonds in excess of three per cent of its taxable property, the issue is void, State ex rel. Zylstra v. Clausen, 66 W. 324. 413 §319.

Consolidated districts—413 §279 cannot join union high school, State ex Bell v. Thaanum, 74 W.

413 §337. **Dissolution of Joint Districts.** §10. When five or more years have elapsed from the date upon which two or more school districts united for the purpose of forming a union high school district, such union may be dissolved, if at a special election called by the board of directors of such union high school district for that purpose a majority of three-fifths of the votes cast at said election are in favor of dissolution. The liabilities and assets of the union high school district so dissolved shall be justly apportioned by the county superintendent among the various districts composing the union high school district. R&B §4469; L. 13, ch. 178.

413 §351.

County superintendent has no power to

dissolve consolidated district, Consol Dist. v. Jones, 69 W. 537.

413 §543. **Report of Private Schools.** §6. It shall be the duty of the principal or head of every private school on or before the 30th day of June of each year to make a sworn report to the clerk of the district in which any pupil attending such private school resides of the actual days' attendance in said private school of each such pupil attending said private school during the preceding school year. The report shall include such pupils only as are be-

tween six and twenty-one years of age and whose parents or guardians actually reside in the school district where the said pupil resides and each district in making up the attendance of said district for the purpose of apportionment shall be entitled to the days' attendance so reported. R&B §4567; L. '13, ch. 158.

413 §577.

Note on page 1714 of Code.

413 §625.

A ballot in form of a strip of paper with Kinder v. School Dist. No. 126, 68 W. 410.

"Bonds, Yes" at one end "Bonds, No" at the other, to be torn in half and one end deposited in the ballot box, is sufficient,

413 §670. Payment When Annexed to District of First Class. \$8½. In case any school district has heretofore incurred, or shall hereafter incur, indebtedness for strictly school purposes in excess of one and one-half per cent., and less than five per cent. of the assessed valuation of property in such district, and has heretofore, or shall hereafter, become merged in a district of the first class, the directors and clerk of the last named district may, after such merger, cause to be submitted to the voters within the limits of the district which incurred the obligations, the question of validating and ratifying such indebtedness. The vote shall be taken and the question determined in the manner prescribed in sections 413 §§657, 659 and 661; R&B §§4623, 4624 and 4625. The directors of the district of the first class shall make provisions for payment of the indebtedness so validated by certifying the amount thereof to the county commissioners for a special levy, in the manner prescribed in section 413 §669, R&B §4629: Provided, Such district of the first class may pay a part, or all, of such validating indebtedness from any funds available or by issuing bonds therefor, under the following conditions: When such district of the first class has taken over property of any district without an adjustment and apportionment of property and of indebtedness, as provided in sections 413 §§273, 275; R&B §§4437 and 4438, the directors of the enlarged district shall make such adjustment and apportionment, as of the time of merger, and may pay such validated indebtedness to the extent that the value of the property received shall be found to exceed the total indebtedness of the district annexed. R&B §4629½; L. 13, ch. 136.

413 §725. Elections. §1. The election of school district directors shall, except as otherwise provided by law, be held on the first Saturday in March of each year, at the district school house, if there be one, or if there be none, or more than one, then at one or more places to be designated by the board of directors. Special school elections shall be called and conducted in the manner provided for calling and conducting annual elections. In districts in which elections are held in more than one voting place, the clerks of the election shall forward the election returns to the clerk of the board of school directors, who shall canvass the vote on the Saturday following the election, declare the result and issue certificates of election. R&B §4657; L. 13, ch. 115.

413 §731.

A voter is properly required to hand his ballot to one of the election judges instead of depositing it in the ballot box himself. Kinder v. School Dist. No. 126, 68 W. 410.

413 §739.

A vote by show of hands was not invalid, State ex rel. School Dist. v. Superior Court, 69 W. 189.

413 §825.

County commissioners have no jurisdiction in formation of joint districts, State ex School Dist. 25 v. Com'rs, 72 W.

413 §885.

Gymnasium and playground is school purpose, Sorenson v. Perkins & Co., 71 or 72 W.

413 §839.

It is not a compliance with statute for a parent to give his children private instructions without providing a regular private school for him which in curriculum and hours is similar to the public schools, State v. Connort, 69 W. 361.

An information charging refusal to require or permit children to attend school is sufficient, State v. Counort, 68 W. 361.

413 §899.

Does not limit compensation to value of land alone, State ex rel. School Dist. v. Court, 69 W. 189.

413 §915.

Applies to a physician, who was a pharmacist, prescribing whiskey and filling the prescription, State v. Pomeroy, 68 W. 389.

AN ACT to authorize the improvement and use of school buildings and property and the acquisition and use of other facilities and real and personal property by school districts of the second class and third class for educa-

tional, social, recreational, and other community purposes. Approved March 20, 1913. Laws '13, ch. 129.

413 §1001. **Property for Community Purposes.** §1. That school boards in each district of the second class and third class may provide for the free, comfortable and convenient use of the school property to promote and facilitate frequent meetings and association of the people in discussion, study, improvement, recreation and other community purposes, and may acquire, assemble and house material for the dissemination of information of use and interest to the farm, the home and the community, and facilities for experiment and study, especially in matters pertaining to the growing of crops, the improvement and handling of live stock, the marketing of farm products, the planning and construction of farm buildings, the subjects of household economies, home industries, good roads, and community vocations and industries; and may call meetings for the consideration and discussion of any such matters, employ a special supervisor, or leader, if need be, and provide suitable dwellings and accommodations for teachers, supervisors and necessary assistants.

413 §1003. **School Property to Be Prepared for Purpose.** §2. That each school district of the second or third class, by itself or in combination with any other district or districts, shall have power, when in the judgment of the school board it shall be deemed expedient, to reconstruct, remodel, or build school houses, and to erect, purchase, lease or otherwise acquire other improvements and real and personal property, and establish a communal assembly place and appurtenances, and supply the same with suitable and convenient furnishings and facilities for the uses mentioned in section 1 of this act.

413 §1005. **Plans, Board of Supervision.** §3. That plans of any district or combination of districts for the carrying out of the powers granted by this act shall be submitted to and approved by the board of supervisors composed of seven members, as follows: the State Superintendent of Public Instruction; the head of the Extension Department of Washington State College; the head of the Extension Department of the University of Washington; the County Superintendent of Schools of the county in which such facilities are proposed to be located; these four to choose a fifth member from such county, and a sixth and seventh member, one of whom shall be a woman, from the district or districts concerned.

413 §1007. **Limitation on Expenses.** §4. No real or personal property or improvements shall be purchased, leased, exchanged, acquired or sold, nor any school houses built, remodeled or removed, nor any indebtedness incurred or money expended for any of the purposes of this act except in the manner provided by law for the purchase, lease, exchange, acquisition and sale of school property, the building, remodeling and removing of school houses and the incurring of indebtedness and expenditure of money for school purposes.

TITLE 417—PUBLIC HEALTH.

417 §47. **Registration Districts.** §2. That for the purpose of this act the state shall be divided into registration districts as follows: Each city and incorporated town shall constitute a primary registration district, and each county, exclusive of the portion included within cities and incorporated towns, shall be subdivided by the state registrar into districts in such manner as may appear necessary for the convenience of the people, and each such district shall constitute a primary registration district, and each primary registration district shall be numbered by the state registrar. R&B §5424; L. 13, ch. 163.

417 §49. **Local Registrars.** §3. The health officer of each city and incorporated town shall be the local registrar in and for such primary registration district and shall perform all the duties of local registrar as hereinafter provided. The state registrar shall appoint a suitable person to be local registrar in and for each district not included in cities and incorporated towns, who shall hold such position during the pleasure of the state registrar and shall perform all

the duties of local registrar, as hereinafter provided. Each local registrar shall immediately appoint in writing a deputy who shall be authorized to act in his stead in case of absence, death, illness or disability. R&B §5425; L. 13, ch. 163.

417 §81. Pay of Local Registrars. §19. That each local registrar shall be paid the sum of twenty-five cents for each birth and death certificate properly and completely made out and registered with him and by him returned to the state registrar on or before the 5th day of the following month, which sum shall cover and include the making out of the burial permit and copy of the certificate to be filed and preserved in his office. And in case no births or deaths were registered during any month, the local registrar shall be paid the sum of twenty-five cents for each report to that effect, properly made out in accordance with the directions of the state registrar: Provided, That all local registrars who receive regular compensation as health officers shall not be entitled to the fee of twenty-five cents, above mentioned, but the duties of the local registrar shall be considered as a part of their duty as local health officer. All accounts payable to local registrars under the provisions of this act shall be paid by the treasurer or other lawful officer, out of the funds of the county or city, upon warrants drawn by the county auditor, or other proper local officer of such county or city, which warrant shall specify the number of certificates, properly registered and reports promptly returned where no births or deaths are registered: Provided, however, That no warrant shall be issued to any local registrar until he shall present a certificate from the state registrar stating the number of certificates and reports of no births and no deaths properly returned to the state registrar, which certificates the state registrar shall issue during the months of January, April, July and October of each year, after he shall have received the certificates and reports for the months next preceding. R&B §5441, L. 13, ch. 163.

AN ACT authorizing counties to care for persons suffering from tuberculosis and providing state aid therefor. Approved March 24, 1913; Laws 13, ch. 172.

417 §203. County Tuberculosis Hospitals—Managers. §1. The board of county commissioners of any county shall have power to establish, provide and maintain hospitals and to employ visiting nurses for the care and treatment of persons suffering from tuberculosis, but whenever a hospital is established as herein provided, such visiting nurse or nurses shall be under the control of and subject to the directions of the board hereinafter designated as the board of managers of such hospital.

For these purposes, said board of county commissioners shall have the following powers: To purchase or lease real property therefor or to use for this purpose lands already owned by the county, providing such site shall first be approved by the state board of health. To erect all necessary buildings, make all necessary improvements or repairs and alter any existing building for the use of said hospital: Provided, That such buildings be separate and apart from those designated as alms houses, or county infirmaries: And provided further, That the plans for such erection or alteration shall first be approved by the state board of health. To use county moneys, to levy taxes and to issue bonds as authorized by law to raise a sufficient amount of money to cover the cost of procuring a site, constructing and equipping hospitals and for the maintenance thereof, and all other necessary and proper expenses herein authorized, and create a fund to be known as the "Tuberculosis fund," from which all expenses herein provided for shall be paid. To appoint a board of managers for said hospitals as hereinafter provided. To accept and hold in trust for the county any grant of land, gift or bequest of money, or any donation for the benefit of the purposes of this act, and apply the same in accordance with the terms of the gift.

417 §205. Managers, Appointments and Removal. §2. When the board of commissioners shall have determined to establish a hospital for the care and treatment of persons suffering from tuberculosis and shall have acquired a site therefor and shall have awarded contracts for the necessary buildings

and improvements thereon, it may appoint three citizens of the county, only one of whom may be a physician, who shall constitute the board of managers of said hospital. The term of office of each member of said board shall be three years, and the term of one of such managers may expire annually, the first appointments shall be made for the respective terms of three, two and one years. Appointments of successors shall be for the full term of three years, except that appointment of persons to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any manager to attend four consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers. The managers shall receive no compensation for their services, but shall be allowed their actual and necessary traveling and other expenses, to be audited and paid in the same manner as the other expenses of the hospital. No manager shall be removed from office except for cause shown and after a public hearing on charges reduced to writing. A copy of said charges and the verdict thereon shall be filed with the county auditor.

417 §207. **Superintendent and Employees—Pay.** §3. The board of managers shall appoint a superintendent of the hospital, who shall be the secretary of the board and shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board of managers, and shall be a qualified practitioner of medicine. Said board of managers shall fix the salaries of the superintendent and all other officers and employees and the management of said hospital shall be entirely in the hands of such board.

417 §209. **Treasurer.** §4. The county treasurer of any county which establishes such an institution shall be the treasurer of such institution, and shall receive all moneys raised by taxation or otherwise or paid for the maintenance of inmates of such institution, and shall disburse all moneys to be paid on account of such institution upon warrants drawn upon such fund by the county auditor, as approved by the board of managers.

417 §211. **Admission to Hospital.** §5. Any person having resided one year within the county in which the hospital is situated desiring treatment in such hospital, may apply in person to superintendent or to any reputable physician for examination and such physician, if he finds that said person is suffering from tuberculosis in any form may apply to the superintendent of the hospital for admission of said person. Upon receipt of such application, if there be a vacancy in said hospital, the superintendent shall notify the person named in such application to appear in person at the hospital. If upon personal examination the superintendent and board of managers are satisfied that such person is suffering from tuberculosis he shall be admitted. All applications shall be in writing and shall state whether applicant can pay in whole or in part for his care and treatment while at the hospital, and every application shall be filed and recorded in a book kept for the purpose in the order of receipt. When said hospital is completed and ready for the treatment of patients, or whenever thereafter (there) are vacancies therein, admission to said hospital shall be made in the order in which the names of applicants shall appear upon the application book to be kept as above provided, in so far as such applicants are certified to by the superintendent to be suffering from tuberculosis, except that advance cases shall always be provided for first. No discrimination shall be made in the accommodation, care or treatment of any patient because of the fact that the patient or his relatives contribute to the cost of his maintenance in whole or in part, and no patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital; and no officer or employe of such hospital shall accept from any patient thereof, any fee, payment or gratuity whatsoever for his services. When all persons who are otherwise qualified to admission to any hospital provided by this act are accommodated and provided for, persons who have not resided in the state for one year prior to applying shall be eligible to admission.

417 §213. **Expense of Patients.** §6. Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the

superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he find that such patient or said relatives legally liable for his support, are able to pay for his treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the county treasurer for the support of such patient, a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The county commissioners shall have the power and authority to collect such sum from said patient or his estate, or from his relatives legally liable for his support. If the superintendent find that such patient, or said relatives, are not able to pay, either in whole or in part, for his care and treatment in such hospital, said patient shall be admitted free of charge.

417 §215. Visitation. §7. All hospitals established or maintained under the provisions of this act shall be subject to inspection by any authorized representative of the state board of health, state board of control, the state board of supervision and control of public offices, and the board of county commissioners, and the resident officers shall admit such representatives into every part of the hospital and its buildings and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital.

417 §217. Managers When Hospital Is Almshouse. §8. Wherever a hospital for the care and treatment of persons suffering from tuberculosis exists in connection with, or on the grounds of a county almshouse, the board of commissioners may appoint a board of managers for such hospital, and such hospital and its board of managers shall thereafter be subject to all provisions of this act, in like manner as if it had been originally established hereunder.

417 §219. Non-residents Admitted—Conditions. §9. Any resident of the State of Washington living outside of a county maintaining a tuberculosis hospital may apply for treatment, or any city, village or county may apply on behalf of its charges and the same may be provided for under a stipulated agreement by the party, municipality or county to pay a weekly sum designated by the board of managers of such hospital, but non-residents of a county shall not be provided for to the exclusion of residents of said county.

417 §221. State Shall Pay. §10. There shall be paid by the state treasurer quarterly to the counties maintaining such hospitals, three dollars per week for each person in such institution during the time of confinement as hereinafter provided; except those paying full maintenance.

417 §223. Reports to State Auditor. §11. On the first day of July and quarterly thereafter the board of managers of any county operating such institution shall certify to the state auditor, the county auditor and the state board of control the number of persons cared for at public expense in such institution, the date when such persons were admitted, and the number of weeks each was cared for during the preceding quarter, which certificate shall be attested by the board of managers and sworn to by the superintendent, and when said board of control shall approve the same, the state auditor shall draw a warrant for the amount due according to the provisions of this act.

417 §225. County Commissioners May Manage Hospitals. §12. Whenever the board of county commissioners shall manage such hospitals, such board shall have the same powers and be subject to the same regulations as herein provided for a board of managers.

417 §227. Appropriation by State. §13. There is hereby appropriated for the purposes of this act fifty thousand dollars (\$50,000).

417 §229. Hospitals in Cities First Class. §14. Hospitals operated by municipalities of the first class, now existing, or hereafter established and maintained for the treatment of tuberculosis exclusively, may receive state aid by complying with the provisions of this act, except such institutions shall not be required to operate under a board of managers as provided herein, nor shall said institutions be subject to the provisions of this act regarding charge to patients, except those patients for whom said institutions receive state aid.

417 §231. Supervision by State Boards. §15. The supervision of institutions operating under the provisions of this act shall be by and under the

state board of control. No institution operating hereinunder shall be refused participation in the state aid herein provided for, except after the approval of the state board of health.

417 §233. **Hospitals Exclusive.** §16. After the establishment in any county of a hospital as herein provided for, no person suffering from tuberculosis shall be taken care of or treated at any almshouse or county institution, other than such hospital, except in cases of emergency.

TITLE 421—PUBLIC INDEBTEDNESS.

421 §1.

Does not include roads, *Shea v. Skagit County*, 68 W. 233.

421 §19.

Later general act, 1913, 421 §145 Supp. Bonds for general repair of roads not authorized, *Shea v. Skagit County*, 68 W. 233.

421 §21. **County Road Bonds—Election—Issuance.** §2. Such election may be held at the times and in the manner provided for holding general elections in this state, and it may be held as a special election at such time as the board of county commissioners may designate. The ballots used must contain the words "Bonds, yes," and "Bonds, no." If three-fifths of the legal ballots cast on the question of issuing bonds for the improvement contemplated in the last section shall be in favor of bonds, the said commissioners must issue said bonds in due and legal form, and negotiate or float the same to the best advantage for the county, at not less than par value. Such bonds must bear the signature of the chairman of such board of commissioners, and be countersigned by the county auditor of the county in whose name they are issued, with the seal of the county thereunto attached; and the coupons must be signed by said chairman and said county auditor, and each bond so issued must be registered in the office of the county treasurer, in a book provided for that purpose, which must show the date, number and amount of the bond, and the name, and address of the person to whom the same is issued. R. & B. §5095, L. '13, ch. 150.

AN ACT relating to the validation of certain warrants and other obligations and evidence of indebtedness on the part of counties, cities and towns, issued by the corporate authorities thereof in excess of their legal authority. Approved March 21, 1913. Laws '13, ch. 152.

421 §125. **Prior Warrants, Validation.** §1. Any county, city or town in this state other than any county or city of the first class may ratify in the manner prescribed by this act, the attempted incurring of any indebtedness of such county, city or town, by the issuing of warrants, making of contracts, or creations of other evidences of indebtedness, on the part of such county, city or town, by the corporate authorities thereof at any time prior to the passage of this act, when the only ground of the invalidity of such indebtedness so to be ratified is that, at the time of such attempted incurring thereof, the same, together with all other then existing indebtedness of such county, city or town, exceeding one and one-half per centum of the taxable property in such county, city or town, ascertained by the last assessment for state and county purposes previous to the attempted incurring of such indebtedness, except that in incorporated cities the assessment shall be taken from the last assessment for city purposes, and that such indebtedness was so attempted to be incurred without the assent of three-fifths of the voters therein voting at an election held for that purpose.

421 §127. **Election.** §2. Whenever the corporate authorities of any such county, city or town shall deem it advisable that the ratification authorized by this act shall be obtained, they shall provide therefor by ordinance or resolution, which shall specify separately the amount of each distinct class of such indebtedness so to be ratified, the date or period of the attempted incurring by the corporate authorities of each separate class thereof, and the general nature of the indebtedness composed in each distinct class and shall provide for the holding of an election for that purpose, at which the attempted in-

currence of such indebtedness shall be submitted to the voters in such county, city or town for ratification or approval, of which election notice, to be provided for in such ordinance or resolution, shall be given by publishing the same in a newspaper published in such county, city or town once a week for at least four successive weeks, and if no newspaper is published in such city or town, then by publishing such notice for the same period in a newspaper published in the county wherein such city or town is situate and of general circulation therein. Each distinct class of such indebtedness so specified shall be the subject of a distinct vote in favor of or against the ratification thereof, and such vote shall designate the class of indebtedness referred to by the description thereof used and the amount specified in the ordinance or resolution.

421 §129. **Limitation.** §3. If at an election held as provided for in section two of this act, three-fifths of the voters of such county, city or town, voting at such election, shall vote in favor of the ratification of any distinct class of such indebtedness, specified in the ordinance or resolution providing for such election, then such indebtedness shall thereby become and is hereby declared to be validated and a binding obligation upon such county, city or town, when the only ground of the previous invalidity of such indebtedness is that at the time of the incurring thereof so ratified, the same, together with all other then existing indebtedness of such county, city or town, exceeding one and one-half per centum of the taxable property in such county, city or town ascertained by the last previous assessment for state and county purposes (except that in incorporated cities the assessment shall be taken from the last assessment for city purposes): Provided, That neither anything in this act contained nor the vote cast at any such election shall be deemed to validate or authorize any indebtedness, which, together with all other indebtedness of such county, city or town existing at the time of the attempted incurring of the same exceeded any constitutional limitation of indebtedness which might be incurred with the assent of three-fifths of the voters in such county, city or town voting at an election to be held for that purpose; And provided further, That this act shall apply only to indebtedness attempted to be incurred prior to the passage hereof.

421 §431. **"Corporate Authorities" Defined.** §4. The words "corporate authorities," used in this act, shall be held to mean the legislative or managing body of any county, city or town.

AN ACT authorizing county commissioners to issue county road bonds for constructing and improving public ways, and for aiding in so doing, both within and without the limits of incorporated cities and towns, prescribing the method of expending the proceeds thereof, validating elections and other proceedings heretofore held or had relating thereto, and authorizing certain incomplete proceedings to be completed under this act. Approved March 3, 1913. Laws '13, ch. 25.

421 §145. **County Road Bonds—Election.** §1. The board of county commissioners of any county may, whenever a majority thereof shall so decide, submit to the voters of their county at an election the question whether the said board shall be authorized to issue negotiable coupon road bonds of the county to the amount not to exceed five per centum of the taxable property in said county for the purpose of constructing a new road or roads, or improving established roads within said county, or for aiding in so doing, as prescribed in this act. The word "improvement" wherever employed in this act shall be deemed to embrace any undertaking for any or all of said purposes. The word "road" wherever employed in this act shall be deemed to embrace all highways, roads, streets, avenues, bridges, and other public ways. The provisions of this act shall apply not only to roads which are or shall be under the general control of the county, but also to all parts of state roads in such county and to all roads which are situated or are to be constructed wholly or partly within the limits of any incorporated city or town therein, provided the board of county commissioners finds that the same form or will become a part of the public highway system of such county, and will connect with existing roads in such county. Such finding may be made by

the board of county commissioners at any stage of the proceedings before the actual delivery of the bonds. The constructing or improving of any and all such roads, or the aiding therein, is hereby declared to be a county purpose. The question of the issuance of bonds for any undertaking which relates to a number of different roads or parts thereof, whether intended to supply the whole expenditure or to aid therein, may be submitted to the voters as a single proposition in all cases where such course is consistent with the provisions of the state constitution. If the county commissioners in submitting any such proposition relating to different roads or parts thereof find that such proposition has for its object the furtherance and accomplishment of the construction of a system of public and county highways in such county, and constitutes and has for its object a single purpose, such finding shall be presumed to be correct, and upon the issuance of the bonds such presumption shall become conclusive. No proposition for bonds shall be submitted which proposes that more than forty per cent. of the proceeds thereof shall be expended within any city or town or within any number of cities or towns.

421 §147. Issuance of Bonds. §2. Such election may be held at the times and in the manner provided for holding general elections in this state, or it may be held as a special election at such time as the board of county commissioners may designate. The ballots used must contain the words, "Bonds, Yes," and "Bonds, No." If three-fifths of the legal ballots cast on the question of issuing bonds for the improvement contemplated in the last section shall be in favor of bonds, the said commissioners must issue such negotiable bonds in due and legal form, and negotiate or float the same in such manner as they may deem to the best advantage for the county, at not less than par value. The bonds authorized by this act shall be issued in the name of the county, in denominations of not less than one hundred nor more than one thousand dollars; they shall be payable either (1) to some person or corporation (named therein) or the bearer, or (2) simply to the bearer, at such time as shall be stated therein, not more than twenty years after the date of issue, and bear interest at a rate not exceeding six per cent. per annum, payable semi-annually; they may be made payable in any city in the United States containing a national bank; they shall bear the signature of the chairman of the board of county commissioners, and be countersigned by the county auditor of the county with the seal of the county thereunto attached; and the interest coupons shall be signed by said chairman and said county auditor, and each bond so issued must be registered in the office of the county treasurer in a book provided for that purpose, which must show the date, number and amount of the bond, date of maturity, rate of interest, and the name and address of the person to whom the same is issued: Provided, That it shall be lawful, in case the county commissioners shall so order, for the coupons to bear lithographed or engraved fac-similes of the signatures of the chairman and county auditor instead of their original signatures. The county seal need not be affixed to the coupons. Each coupon must show the number of the bond to which it belongs. Such bonds and coupons shall be printed, engraved or lithographed on good bond paper.

421 §149. Tax Levy—Payments. §3. The county commissioners must ascertain and levy annually a tax sufficient to pay the interest on all such bonds whenever the same becomes due. At least five years prior to the maturity of such bonds and thenceforward in each year until their maturity, the county commissioners must ascertain and levy a tax sufficient to accumulate during such series of years a fund equal to the principal sum of all such bonds then remaining outstanding and unpaid, and the amount of such tax as collected shall be by the county treasurer credited to a special fund for the payment of the principal of such bonds, which shall be designated "Road Bonds of Sinking Fund," (the blank to be filled by inserting the year in which the bonds are issued), and no part of said fund shall be diverted to any other purpose than the payment of such principal. But such fund or any accumulated part thereof may be invested at any time or times in such manner and under such safeguards as may hereafter be provided by the statutes of this state, in which case all interest or premiums that may be realized on any such investment, as well as the principal thereof, shall be credited to such

fund. All such taxes levied either for interest or for the sinking fund shall be a lien upon all property within the county and must be collected in the same manner as other taxes are collected. The county treasurer must pay out of any money belonging to the fund accumulated from the taxes levied to pay the interest as aforesaid, the interest upon all such bonds when the same becomes due upon presentation at the place of payment of the proper coupon, all coupons so paid must be reported to the county commissioners at their first meeting thereafter. Whenever the coupons are payable at any place other than the city in which the county treasurer keeps his office, it shall be the duty of the county treasurer seasonably to remit to a suitable fiscal agent (which shall be either a fiscal agent appointed by the State of Washington or some responsible fiscal agent approved by the county commissioners) at the place of payment the amount of money required for the payment of any coupons which are about to fall due. When any such bonds or coupons are paid, the county treasurer shall suitably and indelibly cancel the same.

421 §151. Sale of Bonds. §4. The commissioners must give notice in some newspaper having a general circulation in said county for a period of at least four (4) weeks next preceding the date of the election, setting forth the proposition as to amount and duration of the bonds to be issued, and the rate of interest thereon which is not to be exceeded, and stating in such notice the road or roads to be built or improved. Such notice need not describe the road or roads with particularity, but it shall be sufficient either to describe the same by termini and with a general statement as to the course of the same, or to use any other appropriate language sufficient to show the purpose intended to be accomplished. The commissioners may, at their option, give such other or further notice as they may deem advisable. When the bonds are issued they may be made to bear the rate of interest stated in the notice or any less rate.

421 §152. Use of Funds. §5. When such bonds are sold, the money arising therefrom shall be immediately paid into the treasury of the county, and shall be drawn only for the improvement for which they were issued, under the general direction of the county commissioners; Provided, That if such improvement includes in whole or in part the constructing or improving of one or more roads, or any part or parts thereof, within the limits of any incorporated city or town and if the county commissioners shall find that the amount of the proceeds of such bonds intended to be expended for any such improvements within such corporate limits will probably not be sufficient to defray the entire expense of such improvement therein, and if they further find it to be equitable that such city or town should bear the remainder of such expense, they shall have power to postpone any expenditure therefor from the proceeds of such bonds until such city or town shall have made provision by ordinance for proceeding with such improvement within its corporate limits at its own expense so far as concerns the cost thereof over and above the amount of such bond proceeds available therefor. In such case it shall be lawful for the county commissioners to consent, under such general directions as they shall impose, that the proper authorities of such city or town shall have actual charge of making the proposed improvement within such corporate limits, such city or town acquiring any needed property or rights and doing the work by contract or otherwise in accordance with the charter or laws governing such city or town, but the same shall be subject to the approval of the county commissioners so far as concerns any payment therefor from the proceeds of such bonds. In such case, as the work progresses and money is needed to pay therefor, the county commissioners shall, from time to time, by proper order or orders, specifying the amount and purpose, direct the county treasurer to turn over to the city or town treasurer such part or parts of the proceeds of the bonds as may be justly applicable to such improvement or part thereof within such city or town, and any money so received by such city or town treasurer shall be inviolably applied to the purpose so specified. When that portion of the entire improvement which lies within any such city or town can readily be separated into parts, the procedure authorized by this section may be pursued separately as to any one or more of such parts of the general improvement. Nothing contained

in this act shall be construed to render the county liable for any greater part of the expense of any improvement or part thereof within any city or town than the proper amount of the proceeds of such bonds, or to prevent such city or town from raising any part of the cost of any such improvement or part of improvement, over and above the amount arising from the proceeds of such bonds, by assessment upon property benefited, or by contribution from any of its general or special funds in accordance with the provisions of the charter or laws governing such city or town. The provisions of this section, other than the direction for the payment into the county treasury of the money arising from the sale of the bonds, need not be complied with until after the issuance of the bonds and the validity of the bonds shall not be dependent upon such compliance.

421 §153. **Prior Proceedings Validated.** §6. In case at any election in any county the question of incurring any such indebtedness or issuing any such bonds has been submitted to the voters of such county by the county commissioners at any time within one year next prior to the day when this act shall take effect, and substantially in conformity herewith, and the vote at such election was such as would have authorized, by sufficient majority of votes, the incurring of such indebtedness and the issuance of such bonds had this act been in force, and had such vote been taken pursuant to the provisions of this act, then in that case such election and vote and all the proceedings in connection therewith had or taken in manner and form aforesaid, and the bond issue intended to be authorized by such proceedings and vote, be and the same are hereby validated and confirmed, with the same effect as if this act had been in force during all such time, and the county commissioners of such county are authorized and empowered to proceed with the matter of incurring such indebtedness and issuing such bonds by sale thereof and completing all proceedings in the manner provided by this act, and to expend the money arising from such bonds and to proceed with the improvement, whether within or without the limits of any city or town, in the manner provided by this act.

421 §155. **Act Concurrent.** §7. This act shall not be construed as repealing or affecting any other act relating to the issuance of bonds for road or other purposes, but shall be construed as conferring additional power and authority; Provided, That any proceedings which may have been begun under any other act but which are in substantial conformity with the provisions of this act may be completed under the provisions of this act, with the same effect as if this act had been in force when such other proceedings were begun.

TITLE 425—PUBLIC LIBRARIES.

425 §1. **Libraries May Be Established.** §1. By a majority vote at any election, any county, city, village, town, school district, or other body authorized to levy and collect taxes, or by a vote of its county commissioners upon petition of one hundred (100) voters voting at the last election, any county, or by a vote of its common council, any city, may establish and maintain a free public library with or without branches, either by itself or in connection with any other body authorized to maintain such library. Whenever twenty-five taxpayers shall petition, the question of providing library facilities shall be voted on at the next election or meeting at which taxes may be voted: Provided, That due public notice shall have been given of the proposed action. R&B §6971; L. '13, ch. 123.

TITLE 431—PUBLIC SERVICE COMMISSION.

431 §1.

Time of construction of depot may be prescribed—objector must appeal—penalty for "neglect" or "refusal," when attaches—excuses, *State ex Com'n v. Great N. R. Co.*, 68 W. 257.

U. S. laws supersede private contracts—damages, *Cowley v. Nor. Pac. R. Co.*, 68 W. 558.

Complaint of depot facilities by commission sufficient—objection to sufficiency must be timely—service of orders—penalties in police power, *State ex Com'n v. O. R. & N. Co.*, 68 W. 160.

Future traffic cannot be burdened with prior deterioration—rates cannot exceed value of service—lumping rates and proceeds—discrimination—comparative rail-

road and electric rates, Puget Sound etc. Co. v. Com'n, 65 W. 75.

Commission should not interfere with naming of stations by railroad unless public necessity requires, State ex Portland etc. Co. v. Com'n, 69 W. 523.

Liability may be limited under former law if lower rate given, Carstens Co. v. N. P. R. Co., 64 W. 256.

Orders of commission requiring track-

age must be on necessity shown reversing, 52 W. 17 Oregon R. R. & N. Co. v. Fairchild, 224 U. S. 510.

Act valid and supersedes inconsistent municipal ordinances, State ex rel. Webster v. Court, 67 W. 37.

Railroad may maintain a spur track across a city alley when authorized by a city franchise, De Kay v. North Yakima Ry., 71 W.

431 §159. Complaints—Petition. §80. Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: Provided, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telephone company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telephone service: Provided, further, That when two or more public service corporations (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: Provided, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or corporation complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. Rules of practice and procedure not otherwise provided for in this act may be prescribed by the commission. L. '13, ch. 145.

431 §173.

G. N. Ry. v. Public Service Comm., 69 W.

Right of review lost by failure to appeal, 579.

431 §183 Statistics and Information. §92. The commission shall ascertain, as early as practicable, the cost of construction and equipment, the amount expended in permanent improvements, and proportionate amount of

such permanent improvements charged in construction and to operating expenses respectively, the present as compared with the original cost of construction, and the cost of reproducing in its present condition the property of every public service company.

It shall also ascertain the amount and present market value of the capital stock and funded indebtedness of every public service company.

It shall also ascertain, in the case of companies engaged in interstate business, the relative value of the use to which such property in this state is actually put in the conduct of interstate business and state business respectively.

It shall also ascertain the total market value of the property of each public service company operating in this state used for the public convenience within the state.

It shall also ascertain the time intervening between the expenditure of money in the cost of construction and time when returns in the shape of dividends were first received by each of these companies.

It shall also ascertain the probable earning capacity of each public service company under the rates now charged by such companies and the sum required to meet fixed charges and operating expenses, and in case of a company doing interstate business it shall also ascertain the probable earning capacity of such company upon intrastate business, and the sum required to meet fixed charges and operating expenses on intrastate business, and the relative proportion of intrastate and interstate business, the relative proportion of the operating expenses connected therewith, the relative proportion of the revenue which should be derived therefrom.

It shall also ascertain the density of traffic and of population tributary to every public service company, and the conditions which will tend to show whether such traffic and population is likely to continue, increase, or diminish.

It shall also ascertain the existence of grades, curvatures and other physical conditions affecting the movement of traffic and business of common carriers.

It shall also ascertain whether the expenditures already made by any public service company in procuring its property were such as were justified by the then existing conditions, and such as might reasonably be expected in the immediate future and whether the money expended by such company has been reasonable for the present needs of the company and for such needs as may reasonably be expected in the immediate future.

The commission is hereby authorized to cause a hearing or hearings to be held at such time or times and place or places as the commission may designate for the purpose of ascertaining the matters and things provided for in this section.

The commission shall, before any hearing is had, notify the company concerned of the time and place of such hearing, by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of such company's property within the state, which shall be a sufficient complaint to authorize the commission to inquire into the matters designated in this section.

All companies affected shall be entitled to be heard and introduce evidence at such hearing. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission.

The commission shall make and render findings of fact in writing covering all matters in this section mentioned concerning which it is directed to inquire into, and shall make findings upon all matters concerning which evidence may have been introduced before it shall tend to show the value of the property used by such company for the public convenience.

Any company affected by the findings, or any of them, believing such findings, or any of them, to be contrary to law or the evidence introduced, or that such findings are unfair, unwarranted or unjust, may institute proceedings in the superior court of the State of Washington in the county in which said hearing has been held, or, if held in more than one county, then in the county in which said hearing was commenced, and have such findings reviewed, and their correctness, reasonableness and lawfulness in-

quired into and determined. Such review shall be heard by the court without the intervention of a jury and shall be heard upon the evidence and exhibits taken before the commission and certified to by it; and the court before which such hearing is had, in case it finds any such findings so sought to be reviewed unjust, incorrect, unreasonable, unlawful or not supported by the evidence, shall make new and correct findings to take the place of such as may not be sustained, unless such findings are set aside and reversed for error on the part of the commission in rejecting evidence properly proffered, in which case it shall remand said hearing to the commission with instructions to receive the evidence so proffered and rejected and make the findings of fact on the evidence so proffered and that already received.

Said public service company or the commission shall have the right to appeal from the decision of the superior court to the supreme court of the State of Washington, as in civil cases. In case the supreme court finds any findings so sought to be reviewed unjust, incorrect, unlawful or unreasonable, or not supported by the evidence, it shall either make and render proper findings or remand the case to the superior court with instructions to make proper findings on the evidence already submitted, unless the same is reversed for error in rejecting evidence properly proffered, in which case the hearing shall be remanded to the commission with instructions to receive the evidence so proffered and make findings on the evidence so proffered and rejected and that already received.

The findings of the commission so filed, or as the same may be corrected by the courts, when properly certified under the seal of the commission, shall be admissible in evidence in any action, proceeding or hearing, excepting with respect to matters of assessment and taxation, in which the state or any officer, department or institution thereof, or any county, municipality, or other body politic and the public service company affected is interested, whether arising under the provisions of this act or otherwise, and such findings when so introduced shall be conclusive evidence of the facts stated in such findings as of the date therein stated under conditions then existing, except as a basis for taxation, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined.

The commission shall hereafter, from time to time, cause further hearings to be had for the purpose of ascertaining the betterments, improvements, additions, and extensions made by any public service company to its property subsequent to the date of any prior hearing, and shall examine into all traffic movement and every matter and thing that would change, modify or affect any finding of fact previously made, and shall at such time make findings of fact supplemental to those theretofore made, showing the amount expended in betterments, improvements, extensions and additions since such prior findings and the cost of reproducing the same, the value of the property used by such company at the time of such subsequent hearing, the relative value of the use to which such property is put in the performance of intrastate and interstate business, respectively, and the value of the property of such company in the state used for the public convenience of intrastate business. Such hearing shall be had upon the same notice, the examination conducted in the same manner, and the findings so made shall have the same force and effect as is provided herein for such original notice, hearing and findings: Provided, That such findings made at such supplemental hearing shall be considered in connection with and as a part of the original findings except in so far as such supplemental findings shall change or modify the findings made at the original hearing. L. '13, ch. 182.

431 §183.

valuation by state tax commission, State ex

Valuation by commission obtains over Oregon R. & N. Co. v. Clausen, 63 W. 535.

AN ACT relating to railroad and highway crossings and to the changing and elimination of grade crossings; providing penalties for the violation of this act, making an appropriation, and repealing (433 §33) chapter 162, Laws of 1909, relating to railroad crossings, and providing for the exercise of the power of eminent domain to carry the purposes of this act into effect. Approved March 6, 1913. L. '13, ch. 30.

431 §223. **Grade Crossings—Definitions.** §1. The term "commission," when used in this act, means The Public Service Commission of Washington.

The term "highway," when used in this act, includes all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public.

The term "railroad," when used in this act, means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. The said term shall also include every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs and sidings used in connection therewith. The said term shall not include street railways operating within the limits of any incorporated city or town.

The term "railroad company," when used in this act, includes every corporation, company, association, joint stock association, partnership or person, its, their or his lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any railroad, as that term is defined in this section.

The term "over-crossing," when used in this act, means any point or place where a highway crosses a railroad by passing above the same.

The term "under-crossing," when used in this act, means any point or place where a highway crosses a railroad by passing under the same.

The term "over-crossing" or "under-crossing" shall also mean any point or place where one railroad crosses another railroad not at grade.

The term "grade crossing," when used in this act, means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses another, at a common grade.

431 §225. **Grade Crossing Prohibited.** §2. All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: Provided, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry.

431 §227. **Petitions for New Crossings.** §3. Whenever any railroad company desires to cross any highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade, and whenever the county commissioners of any county, or the municipal authorities of any city or town, or the state officers authorized to lay out and construct state roads, desire to lay out or extend any highway across any railroad at grade, they shall file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade. Upon receiving such petition the commission shall immediately investigate the same, giving at 'east ten days' notice to the railroad company or companies and the county or municipality affected thereby, of the time and place of such investigation, to the end that all parties interested may be present and be heard. If the highway involved is a state road, the state highway commissioner shall be notified of the time and place of hearing. The evidence introduced shall be reduced to writing and be filed by the commission. If the commission finds that it is not practicable to cross the railroad or highway either above or

below grade, it shall make and file a written order in the cause, granting the right and privilege to construct a grade crossing. The commission, in its discretion, may provide in the order authorizing the construction of a grade crossing, or at any subsequent time, that the railroad company shall install and maintain proper signals, warnings, flagmen, interlocking devices, or other devices or means to secure the safety of the public and its employees. If upon investigation the commission shall find that it is impracticable to construct an over-crossing or under-crossing on the established or proposed highway, and shall find that by deflecting the established or proposed highway a practicable and feasible over-crossing or under-crossing or a safer grade crossing can be provided, it shall continue the hearing on the petition and hold a supplemental hearing thereon. At least ten days' notice of the time and place of such supplemental hearing shall be given to all land owners that may be affected by the proposed change in location of the highway. At such supplemental hearing the commission shall inquire into the propriety, advisability and necessity of changing and deflecting the highway as proposed for the purpose of securing an over-crossing, under-crossing, or safer grade crossing. If the proposed change in route of the highway involves the abandonment and vacation of a portion of an established highway, the owners of land contiguous to the portion of the highway to be vacated and abandoned shall, in like manner, be notified of the time and place of the supplemental hearing. At the conclusion of the hearing on the petition, the commission shall make and file its findings of fact in writing concerning the matters inquired into, and shall determine the location of the crossing which may be constructed, and whether the same shall be an under-crossing, over-crossing, or grade-crossing, and shall determine whether or not any proposed change in the route of an existing highway, or the abandonment of a portion thereof is advisable or necessary to secure an over-crossing, under-crossing, or safer grade crossing. If the commission shall find and determine that a change in route of an existing highway, or abandonment and vacation of a portion thereof is necessary or advisable, it shall further find and determine what private lands, property, or property rights, if any, it is necessary to take, damage, or injuriously affect, for the purpose of laying out and constructing the highway along a new route, and what private lands, property, or property rights, if any, will be affected by the proposed abandonment and vacation of a portion of an existing highway. The lands, property, and property rights found necessary to be taken, damaged, or affected shall be described in said findings with reasonable accuracy, and the right to take, damage or injuriously affect the same shall be acquired as hereinafter provided. In any action brought to acquire the right to take, damage, or injuriously affect any such lands, property, or property rights, the findings of the commission shall be conclusive as to the necessity for taking, damaging, or injuriously affecting the same. A copy of said findings shall be served upon all parties to the cause.

431 §229. **Change in Existing Crossings.** §4. The mayor and city council, or other governing body of any city or town, or the county commissioners of any county within which any highway is crossed by any railroad, or any railroad company whose road is crossed by any highway, may file with the commission their or its petition in writing, alleging that the public safety requires an alteration in the method and manner of such crossing, and its approaches, the location of the highway or crossing, the closing or discontinuance of an existing highway crossing, and the diversion of travel thereon to another highway or crossing or if not practicable to change such crossing from grade or to close and discontinue the same, the opening of an additional crossing for the partial diversion of travel and praying that the same may be ordered. Upon such petition being filed, the commission shall fix a time and place for hearing the petition and shall give not less than ten days' notice thereof to the petitioner, the railroad company and the municipality or county in which the crossing is situate. If the highway involved is a state highway, like notice shall be given to the state highway commissioner. If the change petitioned for requires that private lands, property, or property rights be taken, damaged or injuriously affected to open up a new route for the high-

way, or requires that any portion of any existing highway be vacated and abandoned, ten days' notice of the hearing shall be given to the owner or owners of the private lands, property, and property rights which it is necessary to take, damage or injuriously affect, and to the owner or owners of the private lands, property, or property rights that will be affected by the proposed vacation and abandonment of the existing highway. The commission shall also cause said notice of hearing to be published once in some newspaper of general circulation in the community where such crossing is situate, which publication shall appear at least two days prior to the date of hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence. At the conclusion of the hearing the commission shall make and file its written findings of fact concerning the matters inquired into in like manner as provided in the preceding section for findings of fact upon petition for new crossings. The commission shall also enter its order based upon said findings of fact, which shall specify whether the highway shall continue at grade or whether it shall be changed to cross over or under the railroad or whether said highway shall be closed and travel thereon diverted to another channel, or any other change that the commission may find advisable or necessary. In case the order made requires that private lands, property, or property rights be taken, damaged, or injuriously affected, the right to take, damage, or injuriously affect the same shall be acquired as hereinafter provided.

Petition for the change in any existing grade crossing, or for the elimination thereof, may be filed by the commission on its own motion, and proceedings thereon shall be the same as herein provided for the hearing and determination of a petition filed by a railroad company.

431 §231. **Duty to Maintain Crossings.** §5. When a highway crosses a railroad by an over-crossing or under-crossing, the frame work and abutments of the over-crossing or under-crossing, as the case may be, shall be maintained and kept in repair by the railroad company, and the roadway thereover or thereunder and approaches thereto shall be maintained and kept in repair by the county or municipality in which the same are situated, or if the highway is a state road, the roadway over or under the railroad shall be maintained and kept in repair as provided by law for the maintenance and repair of state roads: Provided, however, That this section shall not apply to over-crossings or under-crossings constructed prior to the passage of this act under special contracts between a railroad company and any county, municipality, or the state, in which different provisions is made for the maintenance and repair of the under-crossing or over-crossing.

431 §233. **Apportionment of Cost.** §6, Subdivision A. Whenever, under the provisions of this act, new railroads are constructed across existing highways, or highway changes are made either for the purpose of avoiding grade crossings on such new railroads, or for the purpose of crossing at a safer and more accessible point than otherwise available, the entire expense of crossing above or below the grade of the existing highway, or changing the route thereof, for the purpose mentioned in this subdivision, shall be paid by the railroad company.

Subdivision B Whenever, under the provisions of this act, a new highway is constructed across a railroad, or an existing grade crossing is eliminated or changed, the entire expense of constructing an over-crossing, under-crossing, or safer grade crossing, as the case may be, shall be apportioned by the commission between the railroad, municipality or county affected, or if the highway is a state road, between the railroad and the state, as justice may require, regard being had for the benefits accruing to the railroad, municipality, county, or state by reason of the improvement. If the highway involved is a state road, the amount not apportioned to the railroad company shall be paid as provided by law for constructing such state road. When an existing grade crossing is ordered eliminated by the construction of an over-crossing or under-crossing, the commission may in its discretion pay an amount not to exceed ten per cent. of the cost thereof out of the appropriation provided in this act, and in such cases the state auditor is hereby authorized and required upon the requisition of the commission, to draw warrants

on the state treasury payable to the party designated by the commission for such amount, and the state treasurer is hereby authorized and required to pay such warrants on presentation.

Subdivision C. Whenever two or more lines of railroad owned or operated by different companies cross a highway, or each other, by an over-crossing, under-crossing or grade crossing required or permitted by this act or by an order of the commission, the portion of the expense of making such crossing not chargeable to any municipality, county, or to the state, shall be apportioned between said railroad companies by the commission unless said companies shall mutually agree upon an apportionment. If it becomes necessary for the commission to make an apportionment between the railroad companies, a hearing for that purpose shall be held, at least ten days' notice of which shall be given.

431 §235. **Apportionment of Construction Work.** §7. In the construction of new railroads across existing highways, the railroads shall do or cause to be done all the work of constructing the crossings and road changes that may be required, and shall acquire and furnish whatever property or easements may be necessary, and shall pay, as provided in the preceding section, the entire expense of such work including all compensation or damages for property or property rights taken, damaged or injuriously affected. In all other cases the construction work may be apportioned by the commission between the parties who may be required to contribute to the cost thereof as the parties may agree, or as the commission may consider advisable. All work within the limits of railroad rights of way shall in every case be done by the railroad company owning or operating the same. The cost of acquiring additional lands, rights or easements to provide for the change of existing crossings shall, unless the parties otherwise agree, in the first instance be paid by the municipality or county within which the crossing is located, or in the case of a state road, shall be paid in the manner provided by law for paying the cost of acquiring lands, rights or easements for the construction of state roads. The expense accruing on account of property taken or damaged shall be divided and paid in the manner provided for dividing and paying other costs of construction. Upon the completion of the work and its approval by the commission, an accounting shall be had, and if it shall appear that any party has expended more than its proportion of the total cost, a settlement shall be forthwith made. If the parties shall be unable to agree upon a settlement, the commission shall arbitrate, adjust and settle the account after notice to the parties. In the event of failure and refusal of any party to pay its proportion of the expense, the sum with interest from the date of the settlement may be recovered in a civil action by the party entitled thereto. In cases where the commission has settled the account, the finding of the commission as to the amount due shall be conclusive in any civil action brought to recover the same if such finding has not been reviewed or appealed from as herein provided, and the time for review or appeal has expired. If any party shall review or appeal from any findings or order of the commission apportioning the cost between the parties liable therefor, the superior court or the supreme court, as the case may be, shall cause judgment to be entered in such review proceedings for such sum or sums as may be found lawfully or justly due by one party to another.

431 §237. **Plans—Proposals.** §8. Plans and specifications of changes in existing crossings proposed under this act, and an estimate of the expense thereof, shall be submitted to the commission for its approval before the commencement of the work. In case the work is to be done by contract, the proposals of the contractor shall be submitted to the commission and if it shall determine that the bids are excessive it shall have power to require the submission of new proposals.

431 §239. **Temporary Crossings.** §9. The commission, in its discretion, good cause appearing therefor, and upon such conditions as it may prescribe, shall have power, without notice or hearing, to grant a permit to construct and maintain a temporary grade crossing for a period not exceeding six months, and may revoke such permit at any time: Provided, That nothing contained in this section shall be construed to prohibit the commission, after

notice and investigation, from permitting the maintenance of a temporary grade crossing for a longer period than six months. Any order granting, refusing to grant, or revoking a permit for a temporary grade crossing shall not be reviewable.

431 §241. **Time Work to Be Done.** §10. The commission, in any order requiring work to be done, shall have power to fix the time within which the same shall be performed and completed: Provided, That if any party having a duty to perform within a fixed time under any order of the commission shall make it appear to the commission that the order cannot reasonably be complied with within the time fixed by reason either of facts arising after the entry of the order or of facts existing prior to the entry thereof that were not presented, and with reasonable diligence could not have been sooner presented to the commission, such party shall be entitled to a reasonable extension of time within which to perform the work. An order of the commission refusing to grant an extension of time may be reviewed as provided for the review of other orders of the commission.

431 §243. **Procedure Before Commission.** §11. Modes of procedure under this act, unless herein otherwise provided, shall be as provided in (431 §1) The Public Service Commission law, being chapter 117, of the laws of 1911 for procedure under that act. The commission is hereby given power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings under this act.

431 §245. **Notices.** §12. All notices required to be served by this act shall be in writing, and shall briefly state the nature of the matter to be inquired into and investigated. Notices may be served in the manner provided by law for the service of summons in civil cases, or by registered United States mail. When service is made by registered mail, the receipt of the receiving post-office shall be sufficient proof of service. When, under the provisions of this act, it is necessary to serve notice of hearings before the commission on owners of private lands, property, or property rights, and such owners cannot be found, service may be made by publication in the manner provided by law for the publication of summons in civil actions, except that publication need be made but once each week for three consecutive weeks, and the hearing may be held at any time after the expiration of thirty days from the date of the first publication of the notice.

431 §247. **Review and Appeal.** §13. Upon the petition of any party to a proceeding before the commission, any finding or findings, or order or orders of the commission, made under color of authority of this act, except as otherwise provided in section 9, may be reviewed in the superior court of the county in which the crossing is located, and the reasonableness and lawfulness of such finding or findings, order or orders inquired into and determined, as provided in The Public Service Commission law (ch. 117, Laws 1911) for the review of findings and orders made under that act. An appeal may be taken to the supreme court from the judgment of the superior court in like manner as provided in said public service commission law for appeals to the supreme court.

431 §249. **Employment of Engineers and Employees.** §14. The commission may employ temporarily such experts, engineers, and inspectors as may be necessary to supervise changes in existing crossings undertaken under this act: the expense thereof shall be paid by the railroad upon the request and certificate of the commission, said expense to be included in the cost of the particular change of grade on account of which it is incurred, and apportioned as provided in this act. The commission may also employ such engineers and other persons as permanent employees as may be necessary to properly administer this act, and the expense thereof shall be paid out of the appropriation herein provided.

431 §251. **Eminent Domain.** §15. Whenever to carry out any work undertaken under this act it is necessary to take, damage, or injuriously affect any private lands, property, or property rights, the right so to take, damage, or injuriously affect the same may be acquired by condemnation as herein-after provided.

Subdivision A. In cases where new railroads are constructed and laid out

by railroad company authorized to exercise the power of eminent domain, the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by the railroad company by a condemnation proceedings brought in its own name and prosecuted as provided by law for the exercise of the power of eminent domain by railroad companies, and the right of eminent domain is hereby conferred on railroad companies for the purpose of carrying out the requirements of this act or the requirements of any order of the commission.

Subdivision B. In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired by the municipality or county petitioning for such new crossing by a condemnation proceeding brought in the name of such municipality or county as provided by law for the exercise of the power of eminent domain by such municipality or county. If the highway involved be a state highway, then the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by a condemnation proceeding prosecuted under the laws relative to the exercise of the power of eminent domain in aid of such state road.

Subdivision C. In cases where the commission orders changes in existing crossings to secure an under-crossing, over-crossing, or safer grade crossing, and it is necessary to take, damage, or injuriously affect private lands, property, or property rights to execute the work, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired in a condemnation proceeding prosecuted in the name of the State of Washington by the attorney general under the laws relating to the exercise of the power of eminent domain by cities of the first class for street and highway purposes: Provided, however, That in the cases mentioned in this subdivision the full value of any lands taken shall be awarded, together with damages, if any accruing to the remainder of the land not taken by reason of the severance of the part taken, but in computing the damages to the remainder, if any, the jury shall offset against such damages, if any, the special benefits, if any, accruing to such remainder by reason of the proposed improvement. The right of eminent domain for the purposes mentioned in this subdivision is hereby granted.

431 §253. **Illegal Crossings are Nuisances.** §16. If an under-crossing, over-crossing, or grade crossing is constructed, maintained, or operated, or is about to be constructed, operated, or maintained, in violation of the provisions of this act, or in violation of any order of the commission, such construction, operation, or maintenance may be enjoined, or may be abated, as provided by law for the abatement of nuisances. Suits to enjoin or abate may be brought by the attorney general, or by the prosecuting attorney of the county in which the unauthorized crossing is located.

431 §255. **Mandamus.** §17. If any railroad company, county, municipality, or officers thereof, or other person, shall fail, neglect, or refuse to perform or discharge any duty required of it or them under this act or any order of the commission, the performance of such duty may be compelled by mandamus, or other appropriate proceeding, prosecuted by the attorney general upon the request of the commission.

431 §257. **Penalty.** §18. If any railroad company shall fail or neglect to obey, comply with, or carry out the requirements of this act, or any order of the commission made under it, such company shall be liable to a penalty not to exceed \$5,000.00, such penalty to be recovered in a civil action brought in the name of the State of Washington by the attorney general. All penalties recovered shall be paid into the state treasury.

431 §259. **Piers, Etc., in Highways.** §19. Whenever, to carry out any work ordered under this act, it is necessary to erect and maintain posts, piers, or abutments in a highway, the right and authority to erect and maintain the same is hereby granted.

431 §261. **No New Right of Action.** §20. Nothing contained in this act shall be construed as conferring a right of action for the abandonment or

vacation of any existing highway or portion thereof in cases where no right of action exists independent of this act.

431 §263. **When Act Not Operative.** §21. This act shall not be operative within the limits of cities authorized to frame their own charters, and it shall not be construed to apply to street railway lines operating in, on, through, along, over, or across any street, alley or other public place within the limits of any incorporated city or town, except that no street car line outside of cities authorized to frame their own charters shall cross a railroad at grade without express authority from the commission.

431 §265. **Act Saved from Courts.** §22. If any section, subdivision, sentence, or clause of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

431 §267. **Repeal—Proceedings Saved.** §23. Chapter 162 of the Laws of 1909 (433 §33), entitled, "An act to regulate the manner in which railroads shall cross highways and other railroads and the manner in which highways shall cross railroads in the State of Washington," approved March 17, 1909, and all other acts and parts of acts in conflict with this act, are hereby repealed: Provided, however, That proceedings on applications for grade crossings pending before the commission at the time this act takes effect may be concluded and determined under existing laws.

431 §269. **Appropriation by State.** §24. There is hereby appropriated out of the general fund the sum of twenty-five thousand (\$25,000.00) dollars or so much thereof as may be necessary to pay the cost of administering this act and the state's proportion of the cost of grade separation made under the provisions of this act.

433 §17.

Legality of consolidation cannot be questioned in condemnation, such being question for the state, Oregon etc. R. & N. Co. v. Wilkinson, 188 Fed. 363.

433 §21.

Resolution not necessary for additional facilities on old line, State ex Nor. Pac. R. Co. v. Court, 68 W. 397.

433 §33.

Act repealed, 431 §267, Supp.

433 §107.

Does not limit the right of action to injuries from which death results, Alberg v. Campbell Lum. Co., 66 W. 84.

435 §57.

Court may not try out conflicting titles and refuse dismissal without prejudice, Knutz v. Dodge, 66 W. 178.

435 §65.

One cannot be a bona fide purchaser of land registered under the Torrens act until his conveyance is registered, Brace v. Superior Land Co., 65 W. 681.

435 §93.

The first mortgage registered takes priority over other instruments, although previously executed, Brace v. Superior Land Co., 65 W. 681.

TITLE 437—RIVERS AND HARBORS.

437 §1.

A port district, superimposed over other municipal territory, is a "municipal corporation" as to debt limit, right to lease property, issue bonds, and adopt scheme of improvements, Paine v. Port of Seattle, 71 W.

Where a port district had adopted a scheme of improvements and issued bonds therefor, the fact that its detailed plan was not adopted until later does not invalidate the bonds. Paine v. Port of Seattle, 71 W.

437 §3. **Port District Formation.** §2. At any general election or at any special election which may be called for that purpose, the board of county commissioners of any county in this state may, or on petition of ten per cent. of the qualified electors of such county based on the total vote cast in the last general county election, shall, by resolution submit to the voters of such county the proposition of creating a port district which shall be co-extensive with the limits of such county as now or hereafter established. Such petition shall be filed with the county auditor, who shall within fifteen (15) days examine the signatures thereof and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed port district. If such petition be found to be insufficient, it shall be returned to the persons filing the same, who may amend

or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen (15) days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the board of county commissioners, who shall submit such proposition at the next general election or, if such petition so requests, the board of county commissioners shall, at their first meeting after the date of such certificate, by resolution, call a special election to be held not less than thirty (30) days nor more than sixty (60) days from the date of such certificate. The notice of election shall state the boundaries of the proposed port district and the object of such election. In submitting the said question to the voters for their approval or rejection, the proposition shall be expressed on said ballot substantially in the following terms:

"Port of....., Yes," (giving the name of the principal seaport city within such proposed port district, or if there be more than one city of the same class within such district, such name as may be determined by the board of county commissioners).

"Port of....., No" (giving the name of the principal seaport city within such port district, or if there be more than one city of the same class within such district, such name as may be determined by the board of county commissioners).

Any petition for the formation of a port district may describe a district of less area than the county in which such petition is filed, and in such event the county commissioners shall fix a date for hearing on such petition and publish a notice of such hearing for two weeks in a newspaper of general circulation in such county, after which hearing the county commissioners may increase or diminish the boundaries of such proposed port district and thereafter the same procedure shall be followed as is prescribed in this act for the formation of the larger port district, except that the petition and election shall be confined solely to the lesser port district: And provided, That whenever two or more petitions for the formation of a port district shall be filed as herein provided, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser port district shall ever be created within the limits, in whole or in part, of any port district. L. '13, ch. 62.

437 §5. Powers of Commissioners. §3. Within five (5) days after such election the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the board of county commissioners shall so declare in its canvass of the returns of such election, and such port district shall then be and become a municipal corporation of the State of Washington and the name of such port district shall be "Port of" (inserting the name appearing on the ballot). The powers of the port district shall be exercised through a port commission consisting of three members, one from each of the three county commissioner districts of the county in which the port district is located, when the port district is co-extensive with the limits of such county. When the port district comprises only a portion of the county, three commissioner districts, numbered consecutively, having approximately equal population and boundaries following ward and precinct lines, shall be described in the petition for the formation of the port district, and one commissioner shall be elected from each of said commissioner districts. No person shall be eligible to hold the office of port commissioner unless he is a qualified voter, a freeholder within such port district, and is and has been a resident for a period of three (3) years, except as hereinafter provided, of the commissioner district from which he is elected. Port commissioners shall hold office for a term of three (3) years and until their respective successors are elected and qualified, each term to commence on the second Monday in January following the election thereto. At the same election at which the proposition is submitted to the

voters as to whether a port district shall be formed, three (3) commissioners shall be elected to hold office, respectively, for the term of one, two and three years. All candidates shall be voted upon by the entire port district, and the candidate residing in commissioner district number one receiving the highest number of votes in the port district shall hold office for the term of three (3) years; and the candidate residing in commissioner district number two receiving the highest number of votes in the port district shall hold office for the term of two (2) years, and the candidate residing in commissioner district number three receiving the highest number of votes in the port district shall hold office for the term of one (1) year, each of said terms to date from the second Monday in January following the election, but also to include the period intervening between the election and the second Monday in January following. All expenses of elections for the formation of such port districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the port district, if formed. Nominations for port commissioners at the first special election and at subsequent general elections shall be by petition of one hundred (100) qualified electors of the commissioner district in which the candidate is a resident, to be filed in the office of the county auditor at least twenty (20) days prior to such election: Provided, however, That there shall be no election held on the first Saturday in December immediately following the creation of such port district: And provided further, That in the event of a vacancy in the office of port commissioner by death, resignation or otherwise, such vacancy shall be filled at the next general election, the vacancy in the interim to be filled by appointment by a majority vote of the remaining port commissioners. In the event that such ad interim appointment shall not be made by the remaining commissioners within fifteen (15) days following the occurrence of the vacancy, the appointment shall be made by the judge of the superior court of the county, and if there is more than one such judge, by such judge who is oldest in years: Provided, That if there be more than three such judges, the appointment shall be made by the three persons holding such office who are the oldest in service therein (in determining seniority, the oldest in years being hereby designated where length of service is equal), and if any one or more of those herein designated shall be unable or shall decline to act, the three shall be made up from the one or more next in seniority of service who are able to act and do not decline. Of the three persons so designated, the appointment made in writing by any two shall be valid. If there should be at the same time such number of vacancies that there are not in office a majority of the full number of commissioners fixed by law, a special election shall be called to fill the same, by the remainder, or, that failing, by the board of county commissioners of the county, such election to be held not more than forty (40) days after the occurring of such vacancies. A vacancy in the office of port commissioner shall occur by death, resignation, removal, conviction of a felony, non-attendance at meetings of the port commission for a period of sixty (60) days unless excused by the port commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty.

All the foregoing provisions of this section are subject to the following provisos: That in any port district which has a population of more than eighty thousand as shown by the last official census of the United States, the port commission shall, provided the proposition for a commission of five members is adopted at an election as hereinafter provided, consist of five members, one from each of the three commissioner districts of the port district as hereinbefore prescribed, and two commissioners at large elected from the port district without regard to residence in commissioner districts. The two commissioners at large must have been residents of the port district for three years and shall be nominated and elected at the same time and in the same manner as the other commissioners except that the petition for their nomination may be signed by qualified electors residing in any part of the port district, and on the petition for the nomination and on the

ballot the names of the candidates shall be designated as commissioners at large. The question of the number of commissioners shall be submitted at the first general election after the organization of any port district having said population of more than eighty thousand, or, in the case of any port district already established and having said population, then at the general election in December, 1913, or at any prior election called for some other purpose. There shall be printed on the ballot the words "In favor of a port commission of five members," and the words "Against a port commission of five members," so that every voter shall be enabled to vote for or against the proposition of increasing the number of commissioners to five. If at such election a majority of the voters voting on said proposition, shall vote in favor of a port commission of five members, then said proposition shall be thereby adopted and from and after five days after such election, if it be a general election, otherwise from and after five days after the next general election, the port commission shall consist of five members by the addition of two commissioners at large as hereinbefore provided, but if said proposition shall fail to receive the approval of a majority of the voters voting thereon, the port commission shall continue to consist of three members only. If the proposition shall have carried at a special election, at the next general election, or if submitted at a general election, then at the same general election the names of candidates for commissioners at large shall be printed on the ballot and shall be voted on, but in the latter case the election of commissioners at large shall be contingent upon the adoption of the proposition for a port commission of five members. If such proposition shall have been or shall be adopted, the two candidates for commissioner at large who receive the highest number of votes in the port district shall be elected, and of these two the candidate receiving the higher number of votes shall hold office for the term of three years, and the other shall hold office for the term of two years from the second Monday in January following, and in addition thereto both shall hold office for the period which begins five days after their election and extends to the commencement of the term on said second Monday in January. When the term of office of any commissioner at large shall be about to expire, his successor shall be elected at the general port district election next preceding the expiration of such term, and such successor shall hold office for the term of three years from the second Monday in January following. A majority of the persons holding the office of port commissioner at any time shall constitute a quorum of the port commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted unless there are in office at least a majority of the full number of commissioners fixed by law. L. '13, ch. 62.

437 §6. **Elections.** §31½. A general election shall be held on the first Saturday in December of each year for the election of a port commissioner or commissioners and for the submission of propositions, and special elections shall be held at such times and for such purposes as the port commission may by resolution prescribe, subject to the limitations and pursuant to the requirements of this act. All elections shall be called and held as in this section provided except as in this act otherwise expressly provided. All notices of election shall be given by publishing the same for a period of ten days in a daily newspaper of general circulation published in said port district, or, if there is no daily newspaper published therein, then in at least two issues of a weekly newspaper published in said port district, such publication to be made within a period of twenty (20) days immediately preceding such election; and by posting, for at least ten (10) days prior to the date of election, a written or printed notice of such election in each polling place within such port district. The published notice shall give the time of holding the election, the hours the polls will remain open, the officer or officers to be elected, and a statement of the propositions to be submitted, and the posted notices shall, in addition, give the location of the polling places.

There shall be not less than one polling place in each of the various wards of any incorporated city within such port district, and one polling place

within each precinct of each port district not within the limits of any incorporated city. It shall be the duty of the county commissioners in the formation of a port district, and of the port commission in all subsequent elections, to, at least twenty (20) days before each election, designate the polling places and appoint three election officers for each place of voting. At all elections the vote shall be by ballot. The polls shall be open between such hours of the day as the commission shall designate, but in every case the polls shall be open between one o'clock p. m. and eight o'clock p. m. All electors who are, at the time of such election, duly qualified to vote within their respective precincts under the general election laws for state and county officers shall be entitled to vote at any election held in such port district.

Officers of the city and county having charge of the registration books of any city or precinct in a port district shall deliver the same for the use of the election officers at all port elections. In the event of such registration books being required by law to be used by any school district or other public corporation at the same time as the use thereof will be necessary by the port district, such books shall be delivered to the port commission and school district or other public corporation jointly, and the same polling places and registration books may be used jointly in such cases, and the same individuals may serve as election officers for all such joint elections, and in such cases the compensation of such election officers and other expense shall be so divided that the port district shall bear only its proportionate share thereof.

The manner of conducting and voting at elections under this act, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as provided by the general election laws governing the election of state and county officers, except as otherwise provided in this act.

Immediately after the closing of the polls the election officers shall then and there, without removing the ballot box from the place where the ballots were cast, proceed to count the votes, and as soon as such count is completed a return thereof shall be signed by such election officers and securely enveloped and sealed and delivered, together with the ballot box containing the ballots, to the port commission, or some person delegated to receive the same on their behalf.

Within five days after the election, the port commission shall meet and proceed to canvass the returns of such election, and shall thereupon declare the result. L. '13, ch. 62.

437 §7. Powers of District. §4. All port districts organized under the provisions of this act shall be and are hereby authorized to acquire by purchase or condemnation, or both, all lands, property, property rights, leases, or easements necessary for the purposes of the port districts, and to exercise the right of eminent domain in the acquirement or damaging of all land, property, property rights, leases or easements, and the levying and collection of assessments upon property for the payment of all damages and compensation in carrying out the provisions for which said district shall have been created, and such right shall be exercised in the same manner and by the same procedure as is or may be provided by law for cities of the first class, except insofar as such may be inconsistent with the provisions of this act, and the duties devolving upon the city treasurer under said law be and the same are hereby imposed upon the county treasurer for the purposes of this act; and to lay out, construct, condemn, purchase, acquire, add to, maintain, conduct and operate any and all systems of sea walls, jetties, wharves, docks, ferries, canals, locks, tidal basins and other harbor improvements, rail and water transfer and terminal facilities within such port district; to establish local improvement districts within such port districts, and to levy special assessments under the mode of annual installments extending over a period not exceeding ten (10) years on all property specially benefited by any local improvement, on the basis of special benefits, to pay, in whole or in part, the damages or costs of any improvements ordered in such local improvement district; to issue local improvement bonds in any such local

improvement district to be repaid by the collection of local improvement assessments: Provided, That the levying and collection of all such assessments and issuance of bonds hereby authorized shall be in the manner now and hereafter provided by state law for the levying and collection of local improvement assessments and the issuance of local improvement bonds by cities of the first class, insofar as the same shall not be inconsistent with the provisions of this act: Provided, however, That the duties devolving upon the city treasurer under said laws be, and the same are hereby, imposed upon the county treasurer for the purposes of this act; and to own and control lands, leases and all easements in land necessary for the purposes of the port district; to improve navigable and non-navigable waters of the United States and the State of Washington within the port district; to create and improve for harbor purposes new waterways within the port district; to regulate and control all such waters and all natural or artificial waterways (waterways of commercial districts excepted) within the limits of such port district so far and to the full extent that this state can grant the same, and remove obstructions therefrom; to straighten, widen, deepen and otherwise improve any and all waters, watercourses, bays, lakes or streams, whether navigable or otherwise, flowing through or located within the boundaries of such port district; to fix absolutely and without right of appeal or review the rates of wharfage, dockages, warehousing and port and terminal charges upon all improvements owned and operated directly by the port district itself, and ferry charges of ferries operated by itself: Provided, however, That the port commission shall file with the public service commission of the State of Washington its schedule of rates and charges so fixed, as is required by the laws of the State of Washington of public service corporations, and may not change any rate or charge so filed without first filing a notice of such change of rate or charge with the public service commission not less than thirty days prior to the going into effect of such change of rate or charge, and to fix, subject to state regulation rates of wharfage, dockage, warehousing and all necessary port and terminal charges upon all docks, wharves, warehouses, quays, or piers owned by said port district but operated under lease from it, to execute leases of all lands, wharves, docks and property owned and controlled by said port district upon such terms as the port commission may deem proper: Provided, That no lease shall be executed for a period longer than thirty (30) years, and every such lease shall be secured by a bond, with surety satisfactory to the port commission, in a penalty not less than the rental for one-sixth of the term, but in no case less than the rental for one year where the term is one year or more, conditioned to carry out and perform the terms and conditions of such lease: Provided, That in any lease the term of which exceeds five (5) years, and when so stipulated in the lease (the insertion of such stipulation to be discretionary with the port commission) the port commission shall accept, with surety satisfactory to the port commission, a bond conditioned to carry out and perform the terms and conditions of the lease for some part of the term, in no event less than five years (unless the remainder of the unexpired term is less than five years, in which case for the full remainder), and in every such case the port commission shall require of the lessee another or other like bond to be executed and delivered within two years, and not less than one year prior to the expiration of the period covered by the existing bond, covering an additional part of the term in accordance with the foregoing provisions in respect to the original bond, and so on until the end of the term, so that there will always be in force a bond securing the performance of the terms and conditions of the lease, and the penalty in every such bond shall be not less than the rental for one-half the period covered thereby, but no such bond shall be construed to secure the furnishing of any other bond; to sell and convey any property in anywise acquired or owned by the port district whenever the port commission of such district shall have by resolution declared such property to be no longer needed for the purpose of the port district, but no property which is a part of the comprehensive scheme or modification thereof adopted by vote of the people shall be sold or disposed of without the assent of a majority of

the voters voting on the question of such proposed sale or disposition at a general or special election; to raise revenue by levy of an annual tax on all taxable property within such port district, not exceeding two mills in any one year: Provided, That such levy shall be made and taxes collected in the manner now or hereafter provided by law for the levy and collection of taxes in school districts of the first class; to borrow money and issue bonds in an amount not exceeding three (3) per cent of the taxable value of all property in such port district, upon a three-fifths majority vote of the qualified voters in such port district voting thereon. General bonds of any such district may be issued for any period not exceeding fifty (50) years. L. '13, ch. 62.

437 §9. Port Commissioners—Organization—Contracts. §5. All port commissioners shall serve without compensation. The port commission shall organize by the election from its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the port commission shall be by resolution recorded in a book or books kept for such purpose, which shall be public records. All funds of the port district shall be paid to the county treasurer, and all disbursements shall be made by such officer on warrants drawn by the county auditor upon order of or vouchers approved by the port commission. The port commission shall have authority to create and fill such positions and fix salaries and bonds thereof as it may by resolution provide. All materials required by the port district may be purchased in the open market or by contract, and all work ordered may be let by contract or done by day labor as the port commission may determine. Before awarding any contract the port commission shall cause to be published in some newspaper published within the district a notice for at least ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications for which must at the time of publication of such notice be on file in the office of the port commission subject to public inspection: Provided, however, That the port commission may at the same time, and as a part of the same notice, invite tenders for said work or materials upon plans and specifications to be submitted by the bidder. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the commission on or before the day and hour named. Each bid shall be accompanied by a certified check payable to the order of the port commission for a sum not less than five per cent of the amount of the bid, and no bid shall be considered unless accompanied by such check. At the time and place named such bids shall be publicly opened and read and the commission shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications. If, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all checks shall be returned to the bidders; but if such contract be let, then and in such case all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond given to the port district for the performance of the contract and otherwise conditioned as required by law, with sureties satisfactory to the commissioners, in an amount to be fixed by the commission, but not in any event less than twenty-five (25) per cent of the contract price. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check and the amount thereof shall be forfeited to the port district. L. '13, ch. 62.

437 §11. Adoption of Harbor Improvement Plans. §6. It shall be the duty of the port commission of any port district, before creating any improvements hereunder, to adopt a comprehensive scheme of harbor improvement in such port district, after a public hearing thereon, of which at least ten days' notice shall be published in a daily newspaper of general circulation in such port district, and no expenditure for the carrying on of any

harbor improvements shall be made by said port commission other than the necessary salaries, including engineers, clerical and office expense of such port district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of a general scheme of harbor improvements in such port district, unless and until such comprehensive scheme of harbor improvement has been so officially adopted by the port commission and ratified by a majority vote of the people of such port district voting thereon in favor thereof at an election which shall be held for such purpose. L. '13, ch. 62.

437 §13. **Improvement to Follow Plans Adopted.** §7. When such general plans shall have been adopted or approved, as aforesaid, every improvement to be made by said commission shall be made substantially in accordance therewith unless and until such general plans shall have been changed by a majority vote of the qualified electors of the port district voting thereon at an election held for such purpose.

437 §15. **Improvements, Ownership of.** §8. No improvements shall be acquired or constructed, by the port district, unless such improvements shall, when completed, be the property of such port district, the county in which such port district is located, any commercial waterway district created within its boundaries, any city within such port district, the State of Washington or the United States of America, and the funds of such port district may be expended in the acquirement or construction of any harbor improvement embraced in such general plan adopted as in this act provided in conjunction with the county in which such port district is located, any commercial waterway district created within its boundaries, any city in such port district, the State of Washington or the United States of America, or all or any of them.

Supplementary—AN ACT permitting and regulating the use of waterway areas between the boundaries thereof and government pierhead lines, and providing for the disposition of receipts therefrom. Approved March 22, 1913. Laws of '13, ch. 168.

437 §17. **Waterway Areas, Lease of—Rents.** §1. Whenever, in any waterways created under the laws of the State of Washington, the government of the United States shall have established pierhead lines in said waterway at any distance from the boundaries thereof established by the state, no structure shall be allowed in the strip of waterway between the boundary and the nearest pierhead line except by the consent of the state land commissioner and upon plans approved and terms and conditions fixed by him, and then only for such period of use as shall be designated by him, but any permit shall not extend for a longer period than thirty (30) years: Provided, however, That the owner of land abutting upon either side of any such waterway shall have the right, if application be made therefor within a period of ninety (90) days following the date when this act shall go into effect, to obtain such a permit for a thirty (30) year term, and every permit obtained by virtue of the exercise of such right shall provide that the area described therein or such reasonable portion thereof as shall be designated by the state land commissioner, having in view the requirements of the business proposed to be carried on thereon, shall be improved upon plans approved by the state land commissioner, the construction of such improvement to be commenced within such time as may be fixed in each case by the state land commissioner, such time to be in no case less than two (2) years from the date of such permit, to be completed within such reasonable time thereafter as the state land commissioner shall fix in each case, any of which times so fixed may be thereafter extended by him, the character of which improvements may be changed either before or after completion with the consent of the state land commissioner, but in all cases where the abutting owner or one claiming under him had prior to February 22, 1913, built upon such area, his improvements shall be recognized and accepted as a sufficient compliance with the requirements of this act so far as concerns the area covered thereby, and as to uncovered area such improvements shall be given the same consideration as in other cases, and every permit obtained

by virtue of the exercise of such right shall further provide that the annual rental to be paid shall be a sum equal to two per cent of the assessed valuation for the year preceding the date of such permit of an equal area of adjoining or abutting shore or tide lands, exclusive of improvements thereon, and where the adjoining or abutting strip of shore or tide lands is of less width than the harbor area, a value proportional to said width: Provided further, however, That the foregoing provision fixing the rate of rental shall not extend beyond December 31, 1928, but all rentals after that date shall be subject to be controlled and fixed in the manner and by the public authority or authorities then provided by law for the same: Provided further, That it shall not be necessary for any public corporation proposing to make use of any such strip of waterway to acquire by condemnation or otherwise the right hereby granted relating thereto, but nothing herein contained shall be construed to deprive any party to any such condemnation proceeding of any damages to which he would have been entitled if this act had not been passed. The state land commissioner shall require of the holder of every permit under this act a bond with sufficient surety, to be approved by said commissioner, in such penalty, and not exceeding twice the amount of the annual rental, but in no case less than five hundred dollars, as may be prescribed by said commissioner, conditioned for the payment of the rental reserved in the permit at or prior to the time of payment therein specified, during the term of such permit or during such part thereof as said commissioner in his discretion shall require to be covered by such bond; and in case only a part of the term of such permit shall be covered thereby, said commissioner shall require another like bond, to be executed and delivered within three months and not less than one month prior to the expiration of the period covered by the previous bond, covering the remainder of the term of the permit, or such part thereof as said commissioner in his discretion shall require to be covered thereby. The said commissioner shall have power at any time to summon sureties upon any bond and to examine into the sufficiency thereof, and if he shall find the same to be insufficient he shall require the holder of the permit to file a new and sufficient bond within thirty days after receiving notice so to do, under penalty of cancellation of the permit; and the said commissioner shall have power upon sixty days' notice to cancel any permit for a substantial breach by the holder thereof of any of the conditions thereof, or for lack of a bond therewith as herein required. In any case where such waterway shall be within the territorial limits of a port district organized under the laws of the State of Washington, the duties herein assigned to the state land commissioner shall be exercised by the port commission of such port district, and in every case the rentals received shall be disposed of as follows: Seventy-five (75) per cent. shall be paid by the state treasurer to the county treasurer of the county wherein such port district is situated, for the use of said port district and twenty-five (25) per cent. into the state treasury, except that in cases where the port district itself shall have constructed or shall own structures or improvements situate upon such strip of waterway the entire rentals for such improved strip of waterway shall be paid directly to such county treasurer for the use of such port district. Nothing herein contained shall confer upon, create or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of such street, but the control of and the right to use such strip is hereby reserved to the State of Washington, except that in cases situate in a port district such control and use shall vest in such port district.

437 §17.

Repealed L. '13, ch. 62, §9.

Supplementary.—AN ACT providing for the leasing of harbor areas and tide lands situate within the territorial limits of port districts, annulling certain preferences relating to leasing of harbor areas, and tide lands, and repealing all conflicting enactments. Approved March 22, 1913. L. '13 ch 169.

437 §28. **Harbor Areas, Port Commissioners May Lease.** §1. The port commission of each port district heretofore created or hereafter to be created under the laws of the State of Washington, shall have full power and authority to lease the harbor areas and tide lands belonging to the State of Washington situate within the territorial limits of such port district to such persons and upon such terms and conditions conforming to the provisions of the constitution of the State of Washington as shall be determined by resolution of such port commission. Every such lease shall provide that the rentals thereunder shall be payable to the state treasurer.

437 §28a. **Lease by Abutting Owner.** §2. The owner of any tide or shore lands abutting any such harbor area shall have the preference right, to be exercised by written application filed within ninety (90) days following the filing of the plat of any tide or shore lands hereafter to be filed, covering tide or shore lands or harbor area within the limits of any port district, or in case of plats heretofore filed, then within ninety (90) days following the taking effect of this act, to obtain a lease of the harbor area abutting his tide land or shore land for a thirty (30) year period, and every lease obtained by virtue of the exercise of such preference right shall conform to the provisions of the state constitution and shall provide that the harbor area described therein, or such a reasonable portion thereof as shall be designated by the port commission of such port district, having in view the requirements of the business proposed to be carried on thereon, shall be improved upon plans approved by such port commission, the construction of such improvement to be commenced within such time as may be fixed in each case by such port commission, such time to be in no case less than two (2) years from the date of such lease and be completed within such reasonable time thereafter as such port commission shall fix in each case, any of which times so fixed may be thereafter extended by such commission, the character of which improvements may, with the approval of the port commission, be changed either before or after completion, but in all cases where the abutting owner or one claiming under him had prior to February 22, 1913, built upon such area, his improvements shall, so far as otherwise conforming to the provisions of the state constitution, be recognized and accepted as a sufficient compliance with the requirements of this act so far as concerns the area covered thereby, and as to uncovered area such improvements shall be given the same consideration as in other cases, and every lease obtained by virtue of such preference shall further provide that the annual rental to be paid shall be a sum equal to two per cent. of the assessed-valuation for the year preceding the date of such lease of an equal area of adjoining or abutting shore or tide lands, exclusive of improvements thereon, and where the adjoining or abutting strip of shore or tide lands is of less width than the harbor area, a value proportional to said width: Provided further, however, That the foregoing provision fixing the rate of rental shall not extend beyond December 31, 1928, but all rentals after that date shall be subject to be controlled and fixed in the manner and by the public authority or authorities then provided by law for the same: Provided, further, That it shall not be necessary for any public corporation proposing to make use of any such harbor area to acquire by condemnation or otherwise the preference right hereby granted relating thereto, but nothing herein contained shall be construed to deprive any party to any such condemnation proceeding of any damages to which he would have been entitled if this act had not been passed.

437 §28.

Prior law 477 §129; rents, prior leases 417 §28f. Supp.

437 §28b. **Bond by Lessee—Rate Regulation.** §3. The port commission shall require of every lessee under this act a bond with sufficient surety, to be approved by the port commission, in such penalty, and not exceeding twice the amount of the annual rental, but in no case less than five hundred dollars, as may be prescribed by the port commission, conditioned for the payment by the lessee of the rental reserved in his lease at or prior to the

time of payment therein specified, during the term of such lease or during such part thereof as the port commission in its discretion shall require to be covered by such bond; and in case only a part of the term of such lease shall be covered thereby, said port commission shall require of such lessee another like bond, to be executed and delivered within three months and not less than one month prior to the expiration of the period covered by the previous bond, covering the remainder of the term of the lease, or such part thereof as the port commission in its discretion shall require to be covered thereby. The port commission shall have power at any time to summon sureties upon any bond and to examine into the sufficiency thereof, and if it shall find the same to be insufficient it shall require the lessee to file a new and sufficient bond within thirty days after receiving notice so to do, under penalty of cancellation of the lease; and the port commission shall have power upon sixty days' notice to cancel any lease for a substantial breach by the lessee of any of the conditions thereof, or for lack of a bond therewith as herein required. Notwithstanding any such lease now or hereafter existing the state shall ever retain and does hereby reserve the right to regulate the rates of wharfage, dockage or other tolls to be imposed by the lessee or his assigns upon commerce for any of the purposes for which the leased area may be used, and the right to prevent extortion and discrimination in such use thereof.

437 §28c. **Leases Annulled—Re-lease.** §4. The lessee under any lease now existing of harbor area situate in a port district, which shall be cancelled or annulled for any reason, shall, upon such cancellation or annulment, have, for ninety (90) days thereafter, a preference right to a new lease, for the remainder of the term of the lease cancelled or annulled, upon the terms and conditions provided in sections 2 and 3 of this act; but in all cases where any cancelled or annulled lease contained provisions relating to the right of the state to annul or cancel the same, like provisions shall be incorporated in any new lease covering in whole or in part the same area.

437 §28d. **Preference Rights Rescinded.** §5. All preferences of lease of harbor areas or tide lands situate in a port district heretofore created by the laws of the State of Washington, which have not been already exercised are hereby annulled.

437 §28e. **Repeal—Leases Saved.** §6. All acts and parts of acts in conflict with the provisions of this act are hereby repealed, but no lease of harbor area or tide lands heretofore executed shall be invalidated hereby.

Supplementary—AN ACT providing for the disposition to be made of the rents received from leases of harbor areas and tide lands. Approved March 22, 1913. Laws '13 ch 170.

437 §28f. **Harbor Areas, Leases Heretofore Made—Rents.** §1. That the rents hereinafter to be paid under existing or future leases of harbor areas and also of tide lands belonging to the State of Washington, shall be hereafter disposed of as follows:

In cases where the leased harbor area or tide land is situated within the territorial limits of a port district already created or to be hereafter created under the laws of the State of Washington, seventy-five (75) per cent. of the rents received for such cases shall be paid by the state treasurer to the county treasurer of the county wherein such port district is situated for the use of such port district and go into a special fund to be expended only for harbor or waterfront improvement purposes and the remaining twenty-five (25) per cent. shall be paid into the general fund of the state treasury; except that in cases where the port district itself shall have constructed or shall own structures or improvements situate upon leased harbor areas, or tide lands, the entire rentals of such improved area or tide land shall go to such port district. In all other cases seventy-five (75) per cent. of the rents shall be paid by the state treasurer into the county treasury of the county in which the leased harbor areas or tide lands are situate, the same to go into a special fund known as the "harbor improvement fund," and to be disbursed only for harbor or harbor improvement purposes;

and the remaining twenty-five (25) per cent. shall be paid into the general fund of the state treasury. The state treasurer being hereby authorized and directed to make such payments to the respective county treasurers for the use of such port districts or counties, as the case may be, on the first days of July and January of each year, of all moneys in his hands on such dates payable under the terms of this act to such port districts and counties respectively.

437 §29.

Retroactive and curative act valid, State ex Brussell v. Graham, 64 W. 621.

Act constitutional, State ex rel. Puget

Mill Co. v. Superior Court, 68 W. 425.

Waterway district may sue in the name of its board of commissioners, State ex rel.

Puget Mill Co. v. Superior Court, 68 W. 425.

437 §37. Voters—Returns—Bond and Oath of Commissioners. §5. Said election shall be held on the day designated in such notice and shall be conducted as hereinafter provided for, and no person shall be entitled to vote at such election unless he shall be a qualified elector of the county in which such district is located, and shall have resided within the boundaries of said proposed district for a period of not less than ninety days next preceding the date of such election, or, unless he shall be the owner of real estate situated within said proposed district. The board of county commissioners shall on the Monday next succeeding said election count and canvass the votes cast thereat, and if on said canvass and count it appears that the majority of votes cast are for the "Commercial Waterway District, Yes," the board shall immediately enter an order upon its records declaring the proposed territory duly organized as a commercial waterway district, giving to such district a proper number, followed by the name of the county and state, and shall, also, declare the three persons who received the highest number of votes duly elected commercial waterway commissioners of such commercial waterway district for the following respective terms of office: The one receiving the highest number of votes three years; the one receiving the next highest number of votes, two years; and the third member one year. Said commissioners so elected shall hold office for said respective terms and until their successors are elected and qualified. Said board shall cause a copy of the order entered of record duly signed to be filed in the office of the secretary of state, and from and after the date of such filing said organization shall be deemed complete, and the members of said board of commissioners so chosen at such election, before entering upon the discharge of their duties shall qualify as county commissioners are required to qualify, and to enter into a bond payable to the State of Washington for the benefit of said district with two or more sureties in the penal sum of not less than one thousand (\$1,000) dollars nor more than five thousand (\$5,000) dollars, conditioned for the faithful performance of their duties as commercial waterway commissioners, to be approved by the board of county commissioners and to be filed with the county clerk of the county in which said district is situated. The members of each successive board of commercial waterway commissioners, whether elected or appointed, shall before entering upon their duties take an oath and enter into a bond, as herein provided, and after being approved by the board of county commissioners shall be filed in the office of the county clerk of the county in which said district is situated. L. '13 ch 46.

437 §39. Election—Canvass of Election. §6. A general election for the election of one member of said board of commercial waterway commissioners for such district shall be held upon the first Tuesday after the first Monday in December of each year after the year in which said district shall have been established and organized, and the term of office of the persons elected thereat shall begin the second Monday of the following January: Provided, That in case of districts heretofore organized an entire board of commissioners shall be elected at the first election to be held hereunder, whose terms of office shall be one, two and three years respectively from said second Monday in January following, in accordance with the respective number of votes received by said three persons as provided in section 5 for

original elections. Said election shall be held in accordance with the school laws of the State of Washington. No official ballot shall be required at the first or any subsequent election, and the law known as the direct primary law of this state shall have no application to the election held under this act, and the expense thereof shall be defrayed by said district, and the judges, clerks, and inspectors of said election shall each receive as compensation for the services rendered at such election the sum of three (\$3.00) dollars per day: Provided, That at least thirty days' notice immediately preceding any such general election shall be given thereof by the board of commissioners of such commercial waterway district by posting the same in four public places within the said district. Said notice shall designate the voting places and contain the names of two electors of said district for each of the said voting places as judges of said election, and the name of one elector of said district, for each of said voting places as inspector thereof, the same to be chosen by said board of commissioners. Said board of commissioners shall act as a canvassing board to canvass the votes of each election, and they shall meet the day following such election and canvass said votes and declare the result thereof and issue certificates of election. L. '13 ch. 46.

437 §47. **Powers of Board—Vacancies.** §10. Said board of commercial waterway commissioners hereinbefore provided for shall have the exclusive charge of the construction and maintenance of all commercial waterways or commercial waterway systems which may be constructed within the said district, and shall be the executive officers thereof, with full power to bind said district by their acts in the performance of their duties as provided by law. In case of vacancy or vacancies occurring in said board by the death, failure to elect, failure to qualify, resignation, such vacancy or vacancies shall be filled at once from the freeholders and qualified electors of said district by the judge of the superior court of said county, and said appointee shall serve until the next annual election and until his successor is elected and qualified: Provided, That in counties where there may be more than one superior judge, the judge eldest in age shall make such appointment. L. '13 ch 46.

437 §55.

ants named had been served, State ex rel.

Court need not find that all the defend- Puget Mill Co. v. Superior Court, 68 W. 425.

437 §83. **Tax, Collection.** §28. Upon the entry of the judgment, the clerk of said court shall immediately prepare a transcript which shall contain a list of the names of all persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by such improvement belonging to each person and corporation, and shall file the same with the auditor of the county for convenience of reference; and from and after the entry of such judgment in the office of the clerk of the court in which the same is rendered, all the lands included in the list of lands benefited by such improvement shall stand charged with the entire cost and expense of said improvement and the other costs, expenses and charges provided for by this act, not exceeding with respect to any lot or tract of land (so far as concerns the original cost) the maximum amount stated or declared in such judgment to be the maximum amount of benefits to be derived by such lot or tract of land or the owners thereof, and all such lands shall thereafter be subject to the assessments to be levied by the board of commissioners for said purposes, which assessments shall be levied pro rata in proportion to the maximum amount of benefits as to each lot or tract of land as stated or declared in such judgment. All assessments shall be levied from time to time by the board of commissioners by written notice to be addressed to and served on the county assessor of the county, which notice shall be so served on the county assessor on or before the first day of November in each year, or as soon thereafter as practicable, and such assessments shall be levied against and apportioned to the lands in such district benefited by said improvement in proportion to the maximum benefits originally determined by the judgment of the court and such assessments shall fall due during the then ensuing calendar year at the

time of the falling due of general taxes, and the amount so designated shall be added by the county assessor to the general taxes of each person or corporation, and to the general taxes against each lot or tract of land or other property, according to such notice, and the several amounts thereof shall be placed upon the general tax rolls in the office of the county assessor and shall be deemed for all purposes a part of the general taxes, and shall constitute liens against each such lot or tract of land of equal rank with state, county and city taxes and shall have the same priority over all other liens as state, county and city taxes have, and shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and for all purposes of delinquency, certificates of delinquency, foreclosure and other proceedings leading up to final payment, enforcement and collection, such assessments shall be deemed a part of the general taxes as aforesaid. The amount of the assessment levied by the commissioners during any one year shall not exceed twenty-five per cent. of the amount estimated by the board of commissioners to be necessary to pay the costs of the proceedings and the establishment of said district and waterway system, and the cost of construction of said work: Provided, That this limitation shall not apply to assessments levied to pay the principal or interest of any bonds issued under authority of this act, or levied for maintenance charges as provided by section 33: And provided further, That where the amount realized from the original assessment shall not prove sufficient to complete the original plans and specifications of any waterway system, alterations, extensions or changes therein for which the said original assessment was made, the board of commissioners of said district shall make such further assessment as may be necessary to complete said system according to the original plans and specifications, which assessment shall be made and collected in the manner provided herein for the original assessment. This amendment shall not be construed to impair or prejudice any proceedings had or taken by any commercial waterway district prior to this amendment under the act hereby amended or any other act relating to commercial waterway districts, but all such proceedings may be continued and carried out under the provisions of this act as hereby amended the same as if originally commenced under the provisions of this act as hereby amended. All proceedings, acts and things which may heretofore have been had or done or attempted to be had or done under the provisions of the act hereby amended or any other act of the legislature relating to commercial waterways shall be considered and deemed a full compliance with the provisions of this amendatory act with reference thereto. And in all cases where any county assessor has prior to this amendment entered upon any county tax rolls by direction of the board of commissioners of any such district an assessment ordered by them and made pro rata in proportion to the several amounts fixed in any such court judgment as the respective maximum amounts of benefits to be derived by each lot or tract of land, notwithstanding that the provisions of this section or of the other sections of the act of which this act is amendatory have not been strictly pursued, nevertheless the said entries upon said tax rolls be and the same are hereby validated and confirmed and given the same effect in all respects as if the said amounts had been entered upon such tax rolls strictly in accordance with the provisions of the law then existing, and all such assessments shall be treated as if levied under the provisions of said act as hereby amended. L. '13 ch 46.

437 §87. **Work, How Done.** §30. After the filing of said transcript said commissioners of such waterway district shall proceed at once in the construction of said improvement, and in carrying on said construction or any extensions thereof, they shall have full charge and management thereof, shall have the power to employ such assistance as they may deem necessary and purchase all material and employ all labor that may be necessary in the construction and carrying on of the work of said improvement; and shall have power to let the whole or any portion of said work to any responsible contractor which said contract shall be let to the lowest responsible bidder after advertising for bids for such work in two

successive issues of some weekly newspaper printed and published in such county, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: Provided, That the commissioners of said commercial waterway district may sell or otherwise dispose of all excavating material of every kind in such manner and upon such terms and conditions as in their discretion they may deem advisable and for the best interest of such commercial waterway district without any notice or other formalities or proceedings whatever. The proceeds of any sales of such excavated material are to be used for the benefit of such commercial waterway district and the payment of any expense connected with the cost of construction or maintenance thereof: Provided further, That in case the whole or any portion of said improvement is let to any contractor said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by said contract, with two or more sureties to be approved by the board of commissioners of said waterway district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his executors, administrators or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further or additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said waterway districts in the name of said district as obligee therein, conditioned that said contractor, his executors, administrators or assigns, or subcontractor, his executors, administrators or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: Provided further, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporation performing said labor and furnishing said materials, goods, wares, merchandise and provisions, shall, within ninety days after the completion of said improvement file their claim, duly verified, that the amount is just and due and remains unpaid, with the board of commissioners of said waterway district. L. '13 ch 46.

437 §95. **Warrants, Issuance of.** §34. The board of commissioners of such district shall elect one of their number chairman and one secretary, and shall keep minutes of all their proceedings, and may issue warrants of such district in payment of all claims of indebtedness against such district: such warrants shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw interest at a rate to be fixed by said board, from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chairman and attested by the secretary of said board: Provided, That no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. L. '13 ch 46.

437 §97. **Bonds.** §35. At any time after the entry of a judgment in a proceedings brought under the foregoing provisions of this act, the board of commissioners of such waterway district may issue bonds as hereinafter provided for all or any part of the total amount of the cost of construction of said improvement, together with the cost of the establishment of the district and any and all other expenses of every kind connected with the completion of such waterway system, including the damages assessed and compensation made to land owners for right of way and the expenses and costs of the entire proceedings, and the purposes of issuing such bonds may embrace, in whole or in part, the funding of any outstanding warrants or obligations of such district. In case such bonds are issued there is hereby appropriated and pledged for the payment thereof a sufficient amount of all the maximum benefits stated or declared, or to be stated or declared, by the judgment of the court against all the lands benefited and to be benefited by the

improvement within such district and there is hereby appropriated and pledged for such payment a sufficient amount of all sums charged against such lands and the assessments therefor as will be sufficient to pay all such bonds as the same or any part thereof become due; and while any such bonds shall be outstanding the board of commissioners shall at no time levy any assessments for any purpose, other than their payment, which shall so far impair the fund to be realized from the collection of all the assessments as to jeopardize the payment of such bonds or to reduce such fund below the point where there will be ample amounts still levyable to provide for the payment thereof. The bonds hereby authorized shall not be sold for less than their par value. All bonds and warrants issued under the authority of this act shall be legal securities which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys. When the county treasurer shall have on hand money of such district available for the payment of the warrants of such district, he shall call such warrants in the same manner and have on hand money of such district available for the payment of the warrants under the same conditions as county warrants. L. '13, ch. 46.

437 §99. **Interest Rate—Execution of Bonds.** §36. Said bonds shall be numbered from one upwards, consecutively, and be in denominations of not less than one hundred (\$100) dollars, nor more than one thousand (\$1,000) dollars. They shall bear the date of issue, shall be made payable to the bearer in not more than ten (10) years nor less than five (5) years from the date of their issue, and bear interest at a rate not exceeding seven per cent. per annum, payable semi-annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of waterway commissioners, and shall be attested by the secretary of the board, and the seal of such district shall be affixed to each bond, but not to the coupons: Provided, however, That said coupons in lieu of being so signed may have printed thereon a facsimile of the signatures of such officers. L. '13, ch. 46.

437 §103. **Sinking Fund.** §38. Beginning five years before said bonds shall become due, the commissioners of such commercial waterway district issuing them are hereby authorized and required to levy four annual assessments each equal to twenty-five per cent of the total amount necessary to liquidate said bonds at maturity; such assessments shall be collected by the county treasurer and kept as a separate fund for the sole purpose of liquidating said bonds in accordance with the provisions of the following section, L. '13, ch. 46.

437 §105. **Payments.** §39. It shall be the duty of the treasurer in any county in which there may be a district issuing bonds under the provisions of this chapter to call in for payment on each interest day on and after five years from the date of any such bonds in numerical order beginning with bond number one, as many of such bonds as can be paid out of the funds on hand for that purpose. Said call shall be published for two consecutive weeks in the newspaper doing the county printing, the first publication to be two weeks prior to the said interest day, and shall state the numbers of bonds so called and that interest thereon will cease on said interest day. L. '13, ch. 46.

437 §107. **Levy for Interest Fund—Coupons as Warrants.** §40. It shall be the duty of such waterway commissioners annually to levy an assessment sufficient for the payment of the coupons hereinbefore mentioned as they fall due. The proceeds of said levy shall be set apart by the county treasurer as a special fund to be known as the "Interest Fund." Said coupons shall be considered for all purposes as warrants drawn upon the funds of the district issuing bonds under the provisions of this chapter, and, when presented to the county treasurer, and no funds are in the treasury to pay said coupons, it shall be his duty to endorse said coupons as presented for payment in the same manner as other warrants upon the funds of said district are indorsed, and thereafter said coupons shall bear interest at the same rate as the bond to which they belong and be subject to call in the same manner as other warrants.

437 §263.

Act is due process of law, *Bilger v. State*,
63 W. 457.

437 §343.

Does not confer power to condemn land
in first class city for public dock, *State ex*
rel. Wauconda Co. v. Court, 68 W. 660.

A bond issue for deepening the channel
of a river "along the lines" laid out by Dis-
trict No. 1, and for diverting the waters
of a river "along the lines" adopted by
District No. 2, is not invalid, *Blaine v.*
Hamilton, 64 W. 353.

AN ACT authorizing counties to contract together for administrative and financial co-operation in the improvement, confinement and protection of rivers and the banks, tributaries and outlets thereof, whose waters flowing into or through such counties work damage by inundation or otherwise, authorizing the levy of taxes and the creation and disbursement of special funds for such purposes, delegating the power of eminent domain in aid of, and providing generally ways and means for the accomplishment of such purposes and the performance of such contracts.

Approved March 11, 1913. Laws '13, ch. 54.

437 §367. **Rivers, Improvements Between Two Counties.** §1. Wherever and whenever a river is or shall be the boundary line or part of the boundary line between two counties, or it, or its tributaries or outlet or part thereof, flows through parts of two counties, and the waters thereof have in the past been the cause of damage, by inundation or otherwise, to the roads, bridges or other public property situate in or to other public interests of both such counties, or the flow of such waters shall have alternated between the said counties so at one time or times such waters shall have caused damage to one county and at another time or times to the other county, and it shall be deemed by the boards of county commissioners of both counties to be for the public interests of their respective counties that the flow of such waters be definitely confined to a particular channel, situate in whole or in part in either county, in a manner calculated to prevent such alternation or to prevent or lessen damage in the future, it shall be lawful for the two counties, and their boards of county commissioners are hereby empowered, pursuant to resolution, to enter into a contract in writing in the names of the respective counties for the purpose of settling all disputes in relation to any such situation, and providing ways and means for the control and disposition of such waters. Any such contract may provide:

(a) That it shall be operative in perpetuity, or only for a term of years or other measure of time to be specified therein.

(b) The amount of money to be expended by each county during each year of the life of said contract, or such other method of determining the amount of expenditure or dividing the financial burden as may be agreed upon.

(c) That an annual tax shall be levied, at the same time and in the same manner as other county taxes are levied, each year during the life of the contract, by the county commissioners of each county. The annual tax herein provided for need not be levied at the same rate for each county, but shall be at such rate in each county as will produce annually the amount of money for each county as is required for the fulfillment of the contract on its part: Provided, however, That in no event shall any such tax levy by either county exceed one mill on the dollar for any one year.

(d) That the general scheme for the improvement of such river shall be as stated in such contract, but by consent of the contracting parties, pursuant to resolution of each board of county commissioners, such scheme may be modified from time to time during the life of the contract. The contract may but need not provide the details of such scheme, but must designate the general purpose to be accomplished. So far as details are not specified in the contract, same shall be for future determination by joint action of the two boards of county commissioners. Any such contract may be subsequently modified or abrogated by mutual consent evidenced by separate resolution of both boards of county commissioners.

437 §369. **How Work Done.** §2. When such a contract shall have been entered into the prosecution of the work of improvement and the expendi-

ture of funds thereof shall be determined upon, controlled and provided for by joint action of the boards of county commissioners of the two counties. So acting jointly, they shall have power to employ subordinates, purchase material or equipment in open market or by contract, let contracts for work, or cause work to be done by day labor, and to reject any and all bids received for work or material. All vouchers, pay rolls, reports, contracts and bonds on contracts shall be in duplicate, one copy to be filed in the office of the county auditor of each county: Provided, however, That the expenditure of said funds must be made in such manner so that the fund from each county is drawn on or expended alternately and such alternate expenditure shall be in proportion to the amount contributed by each county as nearly as may be practicable.

437 §371. **Tax Levy—Use Restricted.** §3. When such a contract shall have been entered into it shall be the duty of each of the boards of county commissioners to make for their respective counties, each year, a tax levy at a rate sufficient to meet the requirements of the contract to be performed by the county, or sufficient to provide such lesser amount as the boards of county commissioners shall agree upon for such year, to be evidenced by separate resolution of each board, and when such levy shall be made the same shall be extended upon the tax rolls of the county levying the same as other taxes shall be extended, and shall be collected in the same manner and shall be a lien upon the property as in the case of other taxes. The fund realized in each county by such tax levy shall go into a separate fund in the treasury of the county collecting the same, to be designated inter-county river improvement fund, and the entire fund so collected in the two counties shall be devoted to and be disbursed for the purposes specified in such contract and as in this act provided, and for no other purpose, but without regard to the particular county in which the work is performed, material required or expenditure made, it being the intent that the entire fund realized in the two counties shall be devoted to the one common purpose as if the two counties were one county and the two funds one fund. The fund in each county shall be disbursed by the county treasurer of such county upon warrants signed by the county auditor of that county. Such warrants shall be issued by order of the board of county commissioners of such county, or a majority thereof. Each county auditor shall, whenever requested by the county auditor of the other county, furnish the county auditor of the other county a statement of payments into and warrants drawn upon the fund of his county from time to time, and in addition thereto, each county auditor shall on the first Monday of January, April, July and October each year during the life of the contract furnish the other a complete statement thereof. Obligations incurred in the prosecution of such improvement and warrants issued shall be payable only out of said special funds, and no general obligation against or debt of either county shall be created thereby or by any contract entered into by virtue of this act, but it is not the intent of this act to deny to either county the right to have in the courts any proper proceeding to compel compliance with such contract on the part of the other county.

437 §373. **Eminent Domain.** §4. When such a contract shall have been entered into the power of eminent domain is hereby vested in each of such counties, to acquire any lands necessary to straighten, widen, deepen, dike or otherwise improve any such river, its tributaries or outlet or to strengthen the banks thereof, or to acquire any land adjacent to such river or its tributaries, or the right to cut and remove timber upon the same for the purpose of preventing or lessening the falling of timber or brush into the waters of such river or tributaries, or to acquire any rock quarry, gravel deposit or timber for material for the prosecution of such improvement, together with the necessary rights of way for the same. Any such land, property or rights may be acquired by purchase instead of by condemnation proceedings. Said right of eminent domain shall extend to lands or other property owned by the state or any municipality thereof. The title to any such lands, property or rights so acquired shall vest in the county in which situate for the benefit of such enterprise and said fund, but when said contract shall

have terminated by lapse of time or for any other reason, then such title shall be held by such county independent of any claims whatsoever of the other county, but any material, equipment or other chattel property on hand shall be converted into money and the money divided between the two counties in the ratio of their respective contributions to the fund. The exercise of such rights of eminent domain or purchase shall rest in the joint control of the two boards of county commissioners. Such eminent domain proceedings shall be in the name of and had in the county where the property to be acquired is situate, provided if either county shall fail or refuse to institute and prosecute any condemnation proceedings when directed so to do by any legal meeting provided for in section 5 of this act, such proceeding may be instituted and prosecuted by and in the name of the other county. The proceedings may conform to the provisions of (171 §173) sections 921 and 926, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, or to any general law now or hereafter enacted governing eminent domain proceedings by counties. The awards in and costs of such proceedings shall be payable out of such funds. The purposes in this act specified are hereby declared to be county purposes of each and both of such counties.

437 §375. Joint Meetings of County Commissioners. §5. When such a contract shall have been entered into and occasion shall arise for the joint action of the two boards of county commissioners whether such joint action is provided for in this act or otherwise desired upon any matter having relation to such contract or the prosecution of such improvement, such joint action may be secured by a notice calling a joint meeting signed by two county commissioners, designating the time and place in either county of such meeting, served by one of the two county auditors upon the remaining county commissioners at least seven days (exclusive of the date of service or mailing) prior to the time so designated. If the notice is signed by two county commissioners of the same county the place of meeting shall be at some place in the other county designated in the notice. Such service may be personal or by mail addressed to the member in care of the county auditor of his county. The six county commissioners may constitute a legal meeting without notice by being present together for that purpose. The auditor's certificate of such personal service or mailing, attached to a copy of the notice, shall be made a part of the records of the meeting and be competent proof of the fact. Except in the case hereinafter provided for, the presence of four of the county commissioners shall be necessary to constitute a legal meeting. Each meeting shall be presided over by one of those present selected by vote. The county auditor of the county wherein the meeting is held shall be secretary of the meeting, and shall make duplicate record of its proceedings, one of which, with his certificate thereon, shall be forwarded to the county auditor of the other county, and such record shall be a part of the record of the board of county commissioners of each county. A majority vote of those present at any legal meeting shall be determinative upon any question properly considered at the meeting, and shall be binding upon each county as if enacted or adopted by its own board of county commissioners separately, but no joint meeting whatsoever shall in any manner continue, extend, change, alter, modify or abrogate the contract when made or any of the terms and conditions contained therein. Each county commissioner shall be paid out of said fund in his own county all disbursements made by him for traveling and other expenses incurred in attending any joint meeting or in any way connected with the prosecution of the improvement. Any legal meeting shall have power to adjourn to another time and place. An adjourned meeting shall have all the powers of the meeting of which it is an adjournment, but shall have no power after the end of the thirtieth day following the date of the original meeting of which it is an adjournment. If the three county commissioners of either county shall fail to attend any two meetings consecutively called, the notice for the next succeeding meeting may be also served upon the special commissioner hereinafter provided for, and if he and three county commissioners attend pursuant to such notice the four shall constitute a legal meeting, but if he does not so attend and three county commissioners do attend, the same shall con-

stitute a legal meeting: Provided, All notices calling a joint meeting shall specify distinctly and separately each question to be considered at said meeting; and it shall be unlawful to consider any question at such meeting or at any adjourned meeting thereof except those which have been distinctly and separately specified, except in cases where all six county commissioners are present or five county commissioners present are unanimous on the question, and in any action which may be taken on any question other than those specified in the notice shall be void and shall not be binding on either county, except in cases where all six county commissioners are present or the action was by unanimous vote of five county commissioners present at such meeting.

437 §377. **Special Commissioner—Powers.** §6. When such a contract shall have been entered into there shall be designated at the first legal joint meeting, or adjournment thereof, held in each calendar year a special commissioner to serve as such until the first joint meeting held in the ensuing year. If such designation shall not be made at any such first annual meeting, the United States engineer in charge of the district in which such improvement is located shall be such special commissioner until the next succeeding first annual meeting. If a special commissioner shall for any reason fail to serve as such officer, or be removed by unanimous vote of any legal meeting, a successor to him may be chosen at any subsequent legal joint meeting during his term. Such special commissioner shall have power to attend and vote at any joint meeting in the following cases and none other, to-wit: (1) In cases specially so provided in section 5 hereof; (2) In any case where the vote of any such joint meeting shall stand equally divided upon any question arising under this act or such contract or in the prosecution of the work of improvement. The special commissioner shall have no voice or vote except upon questions on which the vote of the county commissioners is equally divided. The procedure in cases covered by the foregoing subdivision (2) of this section shall be substantially as follows: It shall be the duty of the secretary of the meeting at which the division shall occur, if the attendance of the special commissioner at that meeting is not secured, to forthwith transmit to the special commissioner written notice of the fact of disagreement and the question involved, and of the time and place to which the meeting shall have been adjourned or at which the question will recur. If there shall be no such adjournment of the meeting, or if the secretary shall not give such notice, any two commissioners may in the manner provided in section 5 hereof call a joint meeting for the consideration of the question in dispute, and in such event either county auditor may give such notice to the special commissioner. No informality in the mode of securing the attendance of the special commissioner shall invalidate the proceedings of or any vote taken at any meeting which he shall attend and which he is empowered to attend by the provisions of this act. The special commissioner shall receive, to be paid equally out of the two funds, his traveling and other expenses incurred in attending meetings or otherwise in connection with the work of improvement, and such compensation for his services as shall be fixed by the joint meeting which shall have selected him, or failing to be so fixed, his compensation shall be ten dollars per day of actual service.

437 §379. **Existing Powers Saved.** §7. Nothing in this act contained shall be construed to prevent any county which may be a party to such contract from further caring for any such river or the banks thereof, as authorized so to do by existing laws or by such laws as may be hereafter enacted, provided the rights of neither county, as fixed by contract, shall be impaired thereby.

437 §381. **Liability of Counties.** §8. No legal claim of any kind or character whatsoever in favor of one county and against the other shall be based upon or created by the enactment hereof, except such as may arise when the contract herein provided for shall have been entered into. After such contract shall have been entered into, should any loss or damage be sustained by either county occasioned by the overflow of any such river, if caused by any act or omission to act of the other county, its officers or agents, or any other cause whatsoever, then such county so suffering or

sustaining said loss shall not be entitled to recover therefor from the other county, nor shall any cause of action, legal or equitable, be based thereon; Provided, however, That if either county shall suffer loss or damage because of the failure or refusal of the other county to perform any such contract on its part to be performed, the injured county shall have a cause of action against the defaulting county to recover the same, but the limit of recovery for any loss or damage suffered in any one year shall not exceed the sum of ten thousand dollars, and any such recovery shall be limited to such special fund, and in no event be recoverable out of the general fund of such defaulting county. If any such loss or damage shall be liquidated in an amount by agreement or by judgment, the defaulting county shall increase its tax levy for said special fund for the ensuing year sufficiently to provide for such liquidated amount: And provided further, That either county may have any proper action in the courts to compel the performance of the contract or any duty imposed thereby or by this act.

437 §383. **Anticipation of Revenues.** §9. When such a contract shall have been entered into, it shall be lawful to issue warrants upon said fund though there be at the time of such issuance no money in the fund, but in such cases the aggregate of such warrants so issued in any year shall not exceed one-half the amount of the next annual tax levy required by such contract. Such warrants shall be stamped by the county treasurer when presented to him for payment, to bear interest at a certain rate thereafter until paid, such rate to be the then current rate as determined by the county auditor.

TITLE 441—ROADS.

441 §35.

Insufficiency of amount tendered is no basis for objecting to confirmation, *Strunz v. Spokane County*, 67 W. 235.

Foot paths following the general line of a platted street do not constitute an opening thereof, *Cheney v. King County*, 72 W.

441 §83.

Street not vacated by non-user, *Mohr v. Pierce County*, 65 W. 370.

Street is not abandoned when a railway set location stakes therein within five years after filing plat, *Clark v. Seattle*, 71 W.

Street dedicated by platting remains open until properly vacated, *Mohr v. Pierce County*, 65 W. 370.

441 §91.

Substantial compliance essential, *Saeger v. Baldwin*, 72 W.

Supplementary—AN ACT relating to the levy and collection of revenues for road and bridge purposes, limiting the expenditure thereof, declaring certain contracts void, fixing the liability for obligations incurred in excess of the limitations herein defined, and providing for the validation and retirement of existing road and bridge indebtedness, and repealing (441 §§131-137) sections 5590, 5591, 5592, 5593, 5594, 5595, 5596, 5597, 5598, 5599, 5600, 5601 and 5602, Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 21, 1913. Laws '13, ch. 151.

441 §131. **Tax Levies.** §1. For the purpose of raising revenue for the construction, maintenance and repair of county roads, bridges and wharves the board of county commissioners shall annually at the time of making the levy for general county purposes make additional levies as follows:

(a) A tax of not more than four mills on the dollar on all taxable property in the county, which tax shall be kept in a fund known as the "General Road and Bridge Fund," and shall be kept separate and distinct from any other funds of the county.

(b) A tax of not more than ten mills on the dollar on all taxable property in each road district previously established by the board, which tax shall be kept separate and distinct from other funds of the county in a fund for each road district known as "Road District No. county": Provided, That in any incorporated city or town, fifteen per cent of all money collected for the general road and bridge fund in such city or town may be expended inside said city or town on roads and bridges connecting with roads leading out into the country known or designated as county roads, under the supervision of the county commissioners.

441 §§131-137.

Repealed L. '13, ch. 151, §9.

441 §132. Use of General Levy. §2. The expenditures from the general road and bridge fund shall be made only for the purpose of constructing, maintaining and repairing such county roads, bridges and wharves which are or will be main thoroughfares or lines of travel for all the inhabitants of the county, and for the purpose of purchasing operating and maintaining machinery, quarries and gravel pits used in such construction, maintenance and repair.

441 §133. Use of District Levy. §3. The expenditures from the road district funds shall be made only for the purpose of constructing, maintaining and repairing such roads, bridges and wharves as are situated within the road district and which shall be in the nature of branch roads or feeders to the main highways passing through the district, and for the further purpose of purchasing, operating and maintaining machinery and equipment used in such construction, maintenance and repair within the district. All bridges herein mentioned shall include all bridges of over twenty feet in length when constructed of wood or over ten feet when constructed of concrete, in counties that have or may hereafter adopt township organization.

441 §134. County Treasurer's Duties. §4. All of the taxes provided for in this act shall be levied, collected and disbursed by the same officers and in the same manner as taxes levied for the county current expense fund.

441 §135. Limit of Expense. §5. The board of county commissioners shall have no power to create a debt or incur any liability, or in any way bind the county for any of the purposes mentioned in sections 2 and 3 hereof, for any amount in excess of eighty per centum of the amount levied in the fiscal year for either the general road and bridge fund or any of the district road and bridge funds, unless after deducting such eighty per centum there is cash in the particular fund against which the liability is incurred: Provided, however, That in case of an unforeseen catastrophe which could not have been anticipated at the time the estimates were computed for such fiscal year, the board of county commissioners shall have authority, after passing a resolution setting out the facts, to issue warrants, which together with the cash on hand, will be sufficient to take care of the particular case, but the amount of such warrant indebtedness shall be included in the levy for the fund against which such warrants are drawn made for the next succeeding fiscal year. All contracts, authorizations, allowances, payments and liabilities to pay, made or attempted to be made in violation of this act shall be void and shall never be the foundation or basis of a claim against a county, and all officers of such county are charged with notice of the condition of the treasury of said county and the extent of the claims against the same. All county commissioners, county auditors, county treasurers and any other officers authorizing or aiding to authorize, or auditing, or allowing any claim or demand upon or against such county, or any fund thereof, in violation of any of the provisions of this act, shall be liable in person and upon their several official bonds to the county of which they are officers, or to the person or persons, corporation or corporations, damaged by such illegal authorization to the extent of his or its loss by reason of the non-payment of the claim.

441 §136. Prior Debt Validated. §6. All warrants outstanding issued prior to January 1, 1913, by any county of the state against either the general road and bridge fund or any district road and bridge fund are hereby validated insofar as such warrants are invalid because of the fact that the board of county commissioners did not have authority to create any indebtedness for road and bridge purposes.

441 §137. Fund for Debts. §7. In any of the counties which, on the first day of January, 1913, had a warrant indebtedness in any of the road and bridge funds there is hereby created a special indebtedness fund which shall be designated as follows: "Special General Road and Bridge Indebtedness Fund, County," and "Special District Road and Bridge Fund of District No. County." All warrants outstanding on the first of January, 1913, shall be transferred to and

paid out of the special indebtedness funds hereby created. All uncollected taxes levied for the year 1912 and prior years, either for general road and bridge purposes or district road and bridge purposes, shall be credited as they are collected to the special indebtedness fund or the fund for which such taxes were levied.

441 §138. Levies for Debt Fund. §8. At the time of making the levy in October, 1913, for road and bridge purposes, the board of county commissioners of each county which on the first day of January, 1913, had any outstanding warrants against the general road and bridge fund, or any district road and bridge fund, shall make a levy of six mills on the dollar on all the taxable property in the county or district for each special indebtedness fund hereby created, or so much thereof as shall be necessary to pay the warrants with accrued interest in each indebtedness fund. The board of county commissioners shall continue to make such special levies in each succeeding year until all of the warrants in each special indebtedness fund are paid. When all of the warrants in each indebtedness fund are paid, with accrued interest, such fund shall be extinguished and the surplus, if any, together with all credits accruing thereto, shall be transferred to the regular general road and bridge fund or district road and bridge fund.

441 §145.

Mistake in bid, bidder recovered deposit,
Donaldson v. Abraham, 68 W. 208.

441 §207.

Roads through cities third and fourth
classes, 441 §238a, Supp.

441 §209. Petition for Permanent Highway. §2. The owners of two-thirds of the lineal feet of lands, other than lands of the state or the United States, fronting upon any public highway or section thereof in any county may present to the board of county commissioners a petition setting forth that the petitioners are such owners, and that they desire that such highway or section thereof be improved under the provisions of this act. The board of supervisors of any township, in any county having township organization, or a majority of them, may, when authorized at a general election, or a special election called for the purpose, sign a petition for the improvement of any public highway within such township, in whole or in part. L. '13, ch. 154.

441 §219. Return of Surveys—Filing. §7. Upon the completion of such profiles, maps, plans, specifications and estimate, a copy thereof shall be transmitted to the state highway commissioner, who shall thereupon examine the same and return them to the board of county commissioners, making such changes therein or recommendations with reference thereto as he may deem advisable, and certifying his approval thereof. Upon receipt of such profiles, maps, plans, specifications and estimate, the board of county commissioners may pass a resolution adopting the same, and that such highway or section thereof shall be improved under the provisions of this act. No resolution thereafter adopted by said board shall have the effect of rescinding or annulling the resolution so adopting such profiles, maps, plans, specifications and estimate, unless the same shall be approved by the state highway commissioner. The profiles, maps, plans, specifications and estimate as finally adopted by the board of county commissioners shall be filed in its office and become a permanent record of the board, and certified copies thereof shall be transmitted to the state highway commissioner and to the county engineer. L. '13, ch. 154.

441 §223. Work, How Done. §9. When the board of county commissioners shall have finally adopted the profiles, maps, plans and specifications for the improvement of any permanent highway under the provisions of this act, said board shall advertise for bids for three successive weeks in a newspaper published at the county seat of such county, and if they deem advisable, in such other newspaper as it shall determine, for the construction and improvement of such permanent highway, or section thereof, according to such profiles, maps, plans and specifications, and shall award the contract to the lowest responsible bidder, save that the board shall have the right to reject any and all bids. All contracts shall be let on the lump sum basis. Before entering into any contract for such construction or improvement, it

shall require a corporate surety bond in the full amount of the contract, conditioned that the party thereto will perform the work upon the terms, within the time, and in accordance with the contract, profiles, maps, plans and specifications, and that such party will indemnify the county against any direct or indirect damages that shall be suffered or claimed for injuries to persons or property during the construction and improvement of such highway and until the same is accepted. Each bid shall be accompanied by a certified check in a sum equal to one-tenth of the amount of such bid, payable to the county, which shall be forfeited to the county upon the failure of the party, for a period of twenty days after any contract is awarded to any such party, to enter into a proper contract and furnish satisfactory bonds as required by this act. Monthly partial payments shall be provided for in the contract and paid in the manner therein provided, when certified by the county engineer or construction engineer employed, as the case may be, to an amount equal to eighty per centum of the value of the work done during the preceding month. Twenty per centum of the contract price shall be retained until the entire work has been accepted and no final payment shall be made until the state highway commissioner shall have examined the work or caused the same to be examined and certify to the state auditor that such work has been fully completed in accordance with the contract and the profiles, maps, plans and specifications governing such work. All payments to be made by the state upon contracts entered into in accordance with the provisions of this act shall be made by the state treasurer from the permanent highway fund hereinafter created, upon the warrant of the state auditor issued upon the presentation of proper vouchers by the person entitled thereto, said vouchers to be approved by the board of county commissioners, and the state highway commissioner, and, in case of final payment, to be accompanied by the certificate of the state highway commissioner as aforesaid. The state auditor shall issue no warrant for any purpose against the permanent highway fund hereinafter provided for unless there be sufficient money to pay such warrant in such fund to the credit of the county affected. No payment shall be made for any incidental changes during the progress of the work, unless the same shall have been approved by the board of county commissioners by resolution, and a copy of said resolution shall have been transmitted to the state highway commissioner. The board of county commissioners shall let no contract for the improvement of any permanent highway or section thereof less than one mile in length. Whenever any permanent highway shall be improved or constructed pursuant to a petition as provided for in section 2 of this act, the proportion of the cost of such improvement chargeable to the property within the improvement district shall be paid out of the general road and bridge fund of the county, and all taxes assessed against abutting property under the provisions of the following section, and all moneys payable by any township, shall, when collected, be paid into said general road and bridge fund. All payments made from the general road and bridge fund upon contracts entered into in accordance with the provisions of this act, shall be made by the county treasurer upon warrants of the county auditor, issued upon the presentation of proper vouchers, approved by the board of county commissioners and the state highway commissioner. L. '13, ch. 154.

441 §225. **Local Assessments.** §10. The county engineer of any county in which any highway or section thereof has been improved or constructed pursuant to a petition as provided in section 2 of this act, shall have the power and it shall be his duty upon receiving notice from the board of county commissioners of the county in which said highway is located, of the cost of construction or improvement of such highway or section thereof, to prepare, verify and file with the county auditor an assessment roll of the assessments and shall assess upon the lands benefited thereby, and situated within the boundaries of an improvement district, to be established, fifteen per cent or such greater per cent as may be stated in such petition, of said total cost. Such improvement district shall be constituted, and the boundaries thereof fixed, as follows: The highway co-terminous with the improvement shall be the central line through the district, and the bordering lands on each side

and within a distance of not less than six hundred and sixty feet, and not more than three miles, such width to be fixed by the board of county commissioners, from the center line of said highway and co-terminous with the construction work or improvement shall be included in and constitute the body of the improvement district and shall be subject to assessment to the extent above provided. For the purpose of making an equitable apportionment of the assessment, such improvement district shall be divided longitudinally on each side of the center line of such highway, into three parts of equal width, which, beginning with the part abutting upon the highway, shall be known as the first, second and third subdivisions, respectively, of such improvement district. In case the petition shall call for the payment of fifteen percent each separate tract or parcel of land in said first subdivision shall be assessed and be subject to a charge for a proportional part of seven per cent of the whole cost of the construction work or improvement of said highway, and it shall be subject to a lien therefor until it shall be paid; each separate tract or parcel of land within said second subdivision shall be assessed and subject to a charge for a proportional part of five per cent of the whole cost of such construction work or improvement and be subject to a lien therefor until it shall be paid; each separate tract or parcel of land in said third subdivision shall be assessed and subject to a charge for a proportional part of three per cent of the whole cost of such construction work or improvement and be subject to a lien therefor until it shall be paid. If the per cent of cost to be paid by such owners shall be greater than fifteen per cent the excess shall be assessed to the property in each subdivision upon the same ratio as such fifteen per cent. The charge upon the several separate tracts or parcels of lands in each subdivision shall be assessed ratably on the basis of the special benefits according to the actual area within such subdivision; that is to say, the area within the first subdivision shall be assessed seven-fifteenths, the area within the second subdivision shall be assessed five-fifteenths, and the area within the third subdivision shall be assessed three-fifteenth of the proportionate part of the cost assessed to the property in the assessment district. Each tract or parcel of land shall be assessed according to the relation of the area thereof to the total area within the subdivision wherein it is situated. The county engineer shall file such assessment roll, as aforesaid, with the auditor of the county at least thirty days prior to the date prescribed by law for the first annual meeting of the county board of equalization after such list shall have been completed, and at said meeting, or an adjourned meeting, said board shall hear all objections to the assessments and determine the same, and correct all errors which may be found in such list; and after the same shall have been examined, compared and corrected by the county board of equalization, the assessment roll shall be filed with the county treasurer, and the amount charged against the several lots, tracts or parcels of land within such improvement district shall be a lien upon such land, and shall be collected in the same manner as the general taxes of such county are collected, and shall become delinquent at the same time as general taxes, and after becoming delinquent shall be increased by the same percentage of penalty, and shall bear interest at the same rate as other delinquent state and county taxes: Provided, That the county commissioners may in their discretion by resolution duly certified to the county treasurer permit the payment of such taxes in ten equal annual installments, in which event each installment shall become delinquent as general taxes, and after becoming delinquent shall bear the same rate of interest as other delinquent state and county taxes: Provided further, That the owner may pay all or any number of such installments at any time, and all deferred payments shall bear interest at the rate of six per cent per annum from the 31st day of May of the year following the filing of the assessment roll with the county treasurer: And provided further, That whenever the county commissioners shall have provided for the payment of said taxes in installments as aforesaid it may, if it shall deem necessary or proper, issue bonds of the county payable from the general road and bridge fund ten years after the date of the issuance thereof with such option to redeem as shall be considered advisable, in an amount not exceeding the

proportion of the cost of such highway which shall be a charge against the abutting property, and that such bonds shall bear interest at a rate not greater than six per cent per annum and shall be sold at not less than par by the board of county commissioners in such manner as they shall deem advisable. A notice directed to all owners of property affected by such assessment, whether known or unknown, to appear before said county board of equalization on a day to be therein specified to make their objections, if they have any, to such assessments, shall be published by the county auditor in a newspaper of general circulation in the county in at least three issues on different days of said newspaper, the first of which shall be at least twenty days prior to the specified date for appearances, and said notice shall contain a description of the highway, for the construction or improvement of which the assessment is made, and enumerate the several sections of land, according to the United States surveys, which shall be wholly or partially included within the special improvement district. If any such assessment shall be deemed invalid by the county board of equalization or adjudged to be invalid by any court of competent jurisdiction, a reassessment of the land within an improvement district with proper boundaries shall be made and collected in the manner herein prescribed. The county boards of equalization may hold adjourned or special sessions whenever it may be necessary to do so for the purpose of hearing objections to, and completing assessment lists required by this act.

All persons owning property abutting on such highway so improved, or residing thereon, shall thereafter pay all highway taxes assessed against them in money, and in the manner now provided by law.

Where the petition for the improvement or construction of any permanent highway shall be signed by the board of supervisors of any township, or a majority of them, under the provisions of section 2 of this act, the proportion of the assessment of abutting property shall, as to property within such township, be a charge upon such township and shall be paid by such township from the moneys raised for the purpose of constructing and improving roads therein into the general road and bridge fund of the county on or before the date of the approval of such construction or improvement work by the state highway commissioner. L. '13, ch. 154.

441 §226. Prior Payments Divided. §6. Where any assessment for the improvement of any permanent highway pursuant to petition has heretofore been made and extended upon the tax rolls of any county and said assessment has not been paid, the county commissioners may provide for the payment of the same in installments, and may issue bonds of the county to an amount not exceeding such unpaid assessment in the manner provided in section 10 of this act. L. '13, ch. 154.

441 §233.

Islands, 441 §238c, Supp.

Fund returned to counties composed of

441 §235. Tax Levy. §14. For the purpose of raising revenues for the improvement and maintenance of permanent highways, under the provisions of this act, the proper state officers shall levy and collect a tax of one and one-half mills upon all property in the state subject to taxation for the year 1913, and for each year thereafter. All moneys derived from such tax shall be paid into the state treasury and credited to a fund to be known as the "Permanent Highway Fund." The amounts received from each county shall be credited to the county paying the same, until such time as the same shall be expended on contracts for permanent highways within such county or for the maintenance of the same under the provisions of this act. Five per cent of all moneys credited to each county under this act and which shall be derived from taxes levied for the year 1912 and subsequent years shall be set aside and expended by the board of county commissioners, upon vouchers approved by such board, for maintaining and repairing roads constructed under the provisions of this act and other roads of like character, and no part of such five percent shall be expended for any other purpose. L. '13, ch. 154.

Supplementary—AN ACT authorizing counties to aid in acquiring right-of-way for, and to build and improve permanent highways through the corporate limits of cities of the third or fourth class of the State of Washington. Approved March 19, 1913. Laws '13, ch. 124.

441 §238a. **Roads Through Cities.** §1. Each and every county of this state is hereby authorized to build, construct and improve any permanent highway as same is defined by (441 §207) chapter 35 of the Session Laws of 1911, through the corporate limits of any city of the third or fourth class, upon such streets or other rights-of-way connecting with such permanent highway in the corporate limits of such municipality as may be provided for such purpose by the municipal authorities, of sufficient width and appropriate for said purpose.

441 §238b. **Joint Expense.** §2. Where such city or town is unable to pay for the condemnation of such rights-of-way, the county may pay or aid such municipality to pay for the same. All expenses herein authorized shall be disbursed and all such construction, improvement and repair herein contemplated shall be disbursed under, and be controlled wholly, by the provisions of (441 §207) said chapter 35 of the Session Laws of 1911, or law amending or superseding the same.

Supplementary—AN ACT providing for the transfer of moneys from the public highway fund in counties composed entirely of islands. Approved March 18, 1913. Laws of '13, ch. 104.

441 §238c. **Refund to Counties Composed of Islands.** §1. Hereafter the state treasurer shall transfer from the public highway fund to the permanent highway fund all taxes levied in counties composed entirely of islands respectively, for the public highway fund, and place to the credit of each of said counties the amount of said levy, which shall be expended on permanent highways under the provisions of (441 §207) chapter 35 of the Laws of 1911.

AN ACT relating to the improvement of streets and highways and providing for the payment of the cost thereof jointly by the assessment of property specially benefited and by counties and cities or towns. Approved March 11, 1913. Laws '13, ch. 51.

441 §292. **Arterial Streets by Counties and Cities.** §1. Whenever any street, avenue or highway within any city or town shall connect at or near the corporate limits of such city or town with any public road or highway not less than two miles in length, and constructed along a main line of travel being uniformly graded to a width of not less than sixteen feet, and having proper bridges, drains and culverts, and surfaced with macadam, stone, compacted gravel, or other material equally as permanent and durable, not less than twelve feet in width, such street, avenue or highway may be improved by grading or regrading, planking or replanking, paving or repaving, macadamizing or remacadamizing, graveling or regravelling, bridging or rebridging, surfacing or resurfacing, from the point of connection with such road or highway to the business center of such city or town, or to a connection with a permanently surfaced street leading thereto, under the provisions of this act. Streets improved under the provisions of this act shall be known as "arterial streets."

441 §292a. **Resolution by Council and County Commissioners.** §2. Whenever the city council or other governing body of any city or town shall desire to improve any arterial street under the provisions of this act it shall adopt a resolution designating the street or streets to be improved, the general character of the improvement to be made, the estimated cost thereof and the amount of such cost which will be of special benefit to the property, a certified copy of which resolution shall be forthwith transmitted to the board of county commissioners. If the board of county commissioners shall approve such resolution the city council or other governing body of such city or town shall thereupon be empowered to and shall improve such arterial street as above provided and to enter into contracts therefor.

441 §292b. **Local Assessments.** §3. So much of the cost of such improvement as shall be of special benefit to property within such city or town shall

be a charge upon such property, and the city council or other governing body shall cause to be created in the manner provided by law a local improvement district for the purpose of defraying so much of the cost as shall benefit property therein. The provisions of law with reference to the creation of local improvement districts for the improvement of streets shall, so far as the same are applicable, apply to arterial streets improved under the provisions of this act: Provided, however, That nothing in this act shall be construed to prevent any property included in such improvement district from being charged under this act with any amount not exceeding 50 per cent of the valuation thereof, as last placed upon it for the purpose of general taxation, exclusive of improvements thereon. So much of the cost of such improvement as shall not be charged to property within the improvement district above provided for shall be paid equally by the county and the city or town. The board of county commissioners of any county is authorized and empowered to pay the portion of the cost chargeable to such county for the improvement of any arterial street under the provisions of this act from the general road and bridge fund of the county, or from the district road and bridge fund of the district with which such arterial street connects. The city council or other governing body of any city or town is authorized to pay the part of the cost of improving any arterial street under the provisions of this act, which shall be a charge against such city or town from the general fund of such city or town or from any special fund which shall be available for that purpose.

441 §292c. **Act Limited.** §4. This act shall not be construed as providing for the maintenance of said arterial highways within the limits of any municipality.

441 §479.

Collision between wagon and street car Inaccurate instruction to jury in case —ordinance and statute, O'Brien v. Wash. vehicle on wrong side of street, sustained, W. P. Co., 71 or 71 W. Segerstrom v. Lawrence, 64 W. 245.

AN ACT regulating the load in proportion to the width of tires that may be transported on vehicles over and along certain state and county roads, and providing penalties for violations thereof. Approved March 21, 1913. Laws '13, ch. 153.

441 §485. **Wagon Tires, Requirements.** §1. It shall be unlawful for any person or corporation to transport in any cart, wagon, automobile truck or other vehicle over and along roads in any county where the character of the material of which the roads in such county are constructed and the climatic conditions prevailing in such county render the transportation of greater loads per inch of width of tire injurious to such roads, any load that shall not be so limited and adjusted that the bearing of the load, including the weight of the vehicle, upon the road as transmitted through the axle to any tire, shall not exceed four hundred pounds per inch of width of such tire, for tires two inches in width or less; and for tires in excess of two inches in width, but not to exceed five inches in width, the load per inch per width of tire shall not exceed four hundred pounds per inch of width of tire plus fifty pounds per inch of width in excess of two inches; and for tires five inches in width the load shall not exceed five hundred fifty pounds per inch of width of such tire; and for tires in excess of five inches in width the load per inch of width shall not exceed five hundred fifty pounds per inch of width of tire plus seventy pounds per inch of width in excess of five inches: Provided, That if the diameter of the wheels bearing the load exceed three feet, an addition of fifty pounds per inch of width of tire may be carried on such wheels for each foot of diameter of such wheel in excess of three feet.

441 §487. **County Commissioners Shall Determine.** §2. It shall be the duty of the board of county commissioners of the respective counties of the state to determine whether or not the character of the material of which the roads of such county are constructed and the climatic conditions prevailing in such county render it necessary that the provisions of this act be enforced in such county, and to enter such determination in the record of the proceedings of the board, and when such determination shall be that the character of the material of which the roads of such county are constructed and the climatic

conditions prevailing in such county are such as to render it injurious to such roads to allow greater loads per inch of width of tire to be transported over and along the roads of such county, the provisions of this act shall be effective in such county, provided, that the provisions of this act shall not apply to vehicles merely passing through and not commonly used therein.

441 §489. **Penalties.** §3. Every person or corporation transporting greater loads per inch of width of tire over and along the state and county roads within any county where the board of county commissioners has determined that this act shall be effective, shall be guilty of a misdemeanor and for a third violation of the provisions of this act shall be guilty of a gross misdemeanor.

453 §9.

"Claim" is synonymous with "cause of action," *Riddoch v. State*, 68 W. 329.

TITLE 457—STATE CAPITOL.

457 §3. **Bonds.** §2. As defined to be the purpose in section one of this act the said capitol commission may proceed at once to issue negotiable annual interest bearing bonds in an amount not exceeding four million dollars against the capitol building fund and to sell the same or to exchange the same for the paying off, refunding and cancelling of the present outstanding warrants against the said capitol building fund, including the interest due and unpaid thereon at the time of such payment, cancellation or refunding thereof and for repaying to the general fund of the state the advancements made therefrom to the capitol building fund under this or any other act. Such bonds shall bear a rate of interest not to exceed five per cent. per annum, and shall be issued in accordance with the provisions hereinafter defined. The proceeds of the bonds herein authorized to be issued shall be used: 1st, in the payment of all outstanding warrants and interest thereon against the capitol building fund; 2nd, in repaying to the general fund the advancements made therefrom to the capitol building fund; 3rd, for the carrying out of the other purposes mentioned in section one of this act. The capitol commission may issue and sell all or any part of said bonds at any one time or from time to time as in their discretion seems best, or may exchange any of said bonds in payment in all or in part for any work done under the provisions of this act. The capitol commission may in its discretion allow a brokerage commission of not to exceed one-eighth of one per cent on the bonds issued, said commission to be paid from the proceeds of the sale of such bonds. The State of Washington hereby guarantees the payment of the principal and the interest on all bonds issued under the provisions of this act. L. '13, ch. 50.

457 §3.

State cannot guarantee bonds, *State Cap-*

School fund cannot be invested in bonds, *itol Com'n v. Board*, 74 W.

457 §7. **Coupons—Interest—Reissue of Bonds.** §4. Whenever the commission shall have been authorized to do so, as in this act or any further act, to issue bonds it shall issue negotiable annual interest bearing coupon bonds, in denominations of one thousand dollars, payable in five years, or any multiple of five years up to twenty years, but if issued for a longer period than five years, the state to have the right, through the capitol commission, or its successor or successors in such functions, to pay or refund the same at any five year period during the life of such bonds. Bonds authorized under this act shall bear interest not to exceed five per centum per annum, such bonds and all interest coupons thereof payable at the office of the state treasurer, and no coupon shall draw interest after the date named in such coupons unless there be no money in the treasury to pay the same and the treasurer shall stamp thereon "Not paid for want of funds," giving the date of such endorsement, in which event such coupon so

stamped shall from such date draw the same rate of interest as it represented on the bonds until it is finally called for payment by the state treasurer. Notice of the time of payment of any bond or coupons shall be made by registered mail to the last known address of the holder thereof as shown on the record of the state treasurer kept for such purposes: Provided, No notice shall be required of any payment to be made of any coupon or bond on date named in such coupon or bond. Interest coupons shall be detached by the state treasurer at his office at the time of payment. No bonds shall be sold or exchanged for less than the face value thereof, and the commission may, in the call for the sale of any bonds provide that such bonds shall be issued only as deemed necessary by the commission, and the commission may issue a new call at any time, or may offer any such bonds for sale from time to time without any formal notice or call for bids thereon. The commission may issue new bonds to take up any issue of bonds theretofore issued, or to take up any issue of warrants, that may have been issued for any purpose authorized in this act or any future act, and the reissue of any bonds or warrants or the issue of any bonds or warrants to take up any outstanding bonds or warrants or the paying out of any funds raised by the sale of any bonds or warrants shall not be deemed an increase in the amount authorized to be expended or indebtedness created under the provisions of this act. L. '13, ch. 50.

457 §18. **Appropriation.** §15. For the purpose of carrying out the provisions of this act there is hereby appropriated out of the capitol building fund the sum of four million dollars (\$4,000,000.00): Provided, however, That no amount in excess of five hundred and fifty-two thousand dollars (\$552,000) shall be deemed to be appropriated unless there are moneys in the capitol building fund arising from the sale of bonds or otherwise to cover the same; the said amount of five hundred and fifty-two thousand dollars to be available immediately to pay expenses incurred in the sale of bonds, for the continuance of work to complete the Temple of Justice, for acquiring additional land for the capitol site, and the other expenses of the capitol commission.

461 §5. *passim* §43.

Repealed 9 §117, Supp.

TITLE 447—STATE LANDS.

477 §1.

Indemnity and lieu lands act '13, 477

§377, Supp.

477 §21.

Grantee of shore lands does not take

islands or neglected fragments, Hauge v. Walton, 72 W.

477 §53.

Note on page 1999 of Code.

Taxes to be paid before removal. 477 §58a, Supp.

AN ACT relating to the sale and removal of timber from state school and granted lands. Approved March 6, 1913. Laws '13, ch. 29.

477 §58. **Time for Removal, Act '13.** §1. In all cases where any timber on any state school or granted lands has been heretofore sold separate from the land and, in the judgment of the board of state land commissioners, the interest of the state will be better served by granting an extension of time for the removal thereof, the said board may extend the time for the removal of such timber for a further period of not to exceed five years from and after the date upon which it may now be removed, upon application and satisfactory showing and upon the payment of the annual rental or charge of one dollar and fifty cents (\$1.50) per acre per year, the said rental to be paid into the various funds as now provided by law: Provided, That before any such extension be granted the applicant shall furnish to the board satisfactory proof that all state, county and other taxes levied or assessed upon such timber have been fully paid; And, provided further, That the provisions of this act shall only apply to sales of timber made prior to June 15th, 1909.

AN ACT to prevent the removal of timber standing upon timbered lands, no portion of which is occupied for farming purposes by the owner thereof, upon which taxes are delinquent and providing a penalty for the violation of the same. Approved March 19, 1913. Laws '13, ch. 112.

477 §58a. **Tax to Be Paid Before Removal.** §1. It shall be unlawful for any person, firm or corporation to remove any timber from timbered lands, no portion of which is occupied for farming purposes by the owner thereof, upon which taxes are delinquent until the taxes thereon have been paid.

477 §58b. **Penalty.** §2. Any person violating the provisions of this act shall be guilty of a gross misdemeanor and punished accordingly.

477 §61. **Sales—Conduct of—Resale.** §14. When the board of state land commissioners shall have decided to sell any lot, block, tract or tracts of granted lands, or timber, fallen timber, stone, gravel or other valuable materials thereon, it shall be the duty of the commissioner of public lands to forthwith fix the date of sale and give notice thereof by advertisement published once a week for five weeks next before the time he shall name in said notice, in at least one newspaper of general circulation published in the county in which the lands are situated, which notice shall specify the place, time and terms of sale, describing with particularity each parcel of land to be sold and stating the appraised value thereof, and by causing to be posted in a conspicuous place in the office of the auditor of the county wherein such lands are situated a copy of said notice. And the commissioner of public lands shall cause all such lands or materials thereon to be sold and arrange such date of sale so that it will fall on the first Tuesday of the month, except where such Tuesday would fall on a legal holiday, in which case no sales shall be made until the following month. The commissioner of public lands shall cause to be printed in pamphlet form a list of all school, granted or other public lands or materials thereon, or tide or shore lands of the first or second class, or detached tide lands, or harbor area leases or mineral lands required by law to be sold at public auction and the appraised value, where the law provides for appraisement, that are to be sold in the several counties of the state, said lists to be issued each month, at least four weeks prior to the date of sale of such lands or materials enumerated thereon, such lands and materials to be listed under the name of the county wherein located, in alphabetical order, giving the appraised values, character of same and such other information as may be of interest to prospective buyers. Said commissioner of public lands shall cause to be distributed to the auditor of each county in the state a sufficient number of such lists to supply the demands made upon them respectively, as reported by such auditors, not exceeding one hundred copies in any one county. And said county auditors shall keep the lists so furnished in a conspicuous place or receptacle on the counter of the public office of their respective departments, and when requested so to do shall mail copies of such lists to residents of their counties. The commissioner of public lands shall retain for free distribution in his office five hundred copies of said lists, as above set forth, such lists to be kept in a conspicuous place or receptacle on the counter of the general office of the commissioner of public lands; and when requested so to do, the commissioner shall mail copies of said lists each month as issued to any applicant therefor. Proof of publication shall be made by affidavit of the publisher or person in charge of the newspaper publishing the notice of sale and by certificate of the auditor showing the posting of the notice of sale as aforesaid and the receipt of the lists as aforesaid, which shall forthwith be sent to and filed with the commissioner of public lands. The board of state land commissioners is hereby authorized to expend any sum of money, not exceeding fifteen dollars in additional advertising of such sale as the said board shall determine to be for the best interests of the state. Such sale shall take place on the day advertised, between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, in front of the courthouse, or of the building in which the superior court is held, in the counties in which there is no courthouse, and shall be sold at public auction to the highest bidder, on the terms prescribed by law and as specified in the notice hereinbefore provided; and no

land shall be sold for less than its appraised value. Such sale shall be conducted under the direction of the board, or the commissioner of public lands; by the county auditor of the county in which the lands are situate; and such auditor shall at once deliver to the purchaser under his hand and seal, a memorandum of his purchase, containing a description of the land purchased, the price bid and the terms of sale, upon the delivery to such auditor, by the purchaser, either in cash or by certified check, or draft drawn upon some bank doing business in this state, or by postal order, of an amount equal to one-tenth of the price of the land by him purchased, payable to the order of the commissioner of public lands; and such auditor shall at once send to the commissioner of public lands such cash or certified check, draft or postal order and a copy of the memorandum delivered to the purchaser, together with such additional report of his doings and proceedings with reference to such sale as may be required by the commissioner of public lands or the board of state land commissioners. If any land so offered for sale be not sold, the same may again be advertised for sale, as provided in this act, whenever in the opinion of the board it shall be expedient so to do; and such land shall again be advertised for sale as provided in this act, whenever any person shall apply to said board in writing to have such land sold and shall agree to pay, at least the appraised price thereof and shall deposit with the commissioner of public lands at the time of making such application, a sufficient sum of money to pay the cost of advertising for such sale, as provided in making original application. R&B §6672. L. '13, ch. 36.

477 §73.

Applies only to executory contracts, State v. Ort, 66 W. 130.

477 §117.

Shore lands defined—Lake Washington act '13, 477 §383, Supp.

477 §122.

Port commissions have powers, 437 §28, supp.; as to past leases, 417 §28f, Supp.

477 §139.

Tideland owner by patent has preference right, Bleakly v. Lake Washington Mill Co., 65 W. 215.

477 §157.

Land above high tide up to meander line passes to patentee, Nassa v. Seaborg, 64 W. 164.

Supplementary—AN ACT relating to the renting and repair of improved escheated lands. Approved March 15, 1913. Laws '13, ch. 73.

477 §192. Escheated Lands, Lease of. §1. The commissioner of public lands is authorized to employ an agent or agents to rent any improved escheated urban property for such rental and time and in such manner as the commissioner may direct: Provided, That no lease thereof for a term longer than one year shall be made except to the highest bidder at public auction in the manner provided by law for the leasing of public lands, and, except in such case, no lessee shall be entitled to compensation for any improvements which he may make thereon. Such agent or agents shall cause such repairs to be made to such property as the commissioner may direct, and shall deduct the cost thereof, together with such compensation and commission as the commissioner may authorize, from the rentals for such property, and the remainder which shall have been collected shall be transmitted monthly to the commissioner of public lands.

477 §217.

Has no application to street extensions, Chlopeck Fish Co. v. Seattle, 64 W. 315.

477 §239.

Commissioners' certificate is presumed to be correct, the cost is based on what is paid for raising the land, interest is allowed on installments of interest unpaid and only the statutory \$10.00 attorney fee is allowed, Richards v. Bussell, 70 W. 554.

Where a contract limited the cost per cubic yard, and subsequently the lands

were platted, the cost of the fill in streets is to be added and charged to the abutting lands, even if it was contemplated, at the time the contract was made, that the land was to be platted, Bussell v. Ross, 64 W. 418.

477 §247.

Lands subsequently platted liable for street fill, Bussell v. Ross, 64 W. 418.

477 §289.

Shore lands defined—Lake Washington, 477 §383, Supp.

AN ACT relating to lands granted to the state for common schools and for educational, penal, reformatory, charitable, capitol building and other purposes; providing for the completion of such grants and the relin-

quishment of certain granted lands; and making an appropriation. Approved March 18, 1913. Laws '13, ch. 102.

477 §377. **Lieu Lands; Agreement with U. S.** §1. For the purpose of obtaining from the United States indemnity or lieu lands for such lands granted to the state for common schools, educational, penal, reformatory, charitable, capitol building or other purposes, as have been or may be lost to the state, or the title to or use or possession of which is claimed by the United States or by others claiming by, through or under the United States, by reason of any of the causes entitling the state to select other lands in lieu thereof, the inclusion of the same in any reservation by or under authority of the United States, or any other appropriation or disposition of the same by the United States, whether such lands are now surveyed or unsurveyed, the commissioner of public lands, with the advice and approval of the board of state land commissioners and the attorney general, is authorized and empowered to enter into an agreement or agreements, on behalf of the state, with the proper officer or officers of the United States for the relinquishment of any such lands and the selection in lieu thereof, under the provisions of this act, of lands of the United States of equal area and value.

477 §379. **Appraisal of Lands.** §2. Upon the making of any such agreement, the board of state land commissioners shall be empowered and it shall be their duty to cause such examination and appraisal to be made as will determine the area and value, as nearly as may be, of the lands lost to the state, or the title to, use or possession of which is claimed by the United States by reason of the causes mentioned in section 1 of this act, and proposed to be relinquished to the United States, and shall cause an examination and appraisal to be made of any lands which may be designated by the officers of the United States as subject to selection by the state in lieu of the lands aforesaid, to the end that the state shall obtain lands in lieu thereof of equal area and value.

477 §381. **Deed to U. S.** §3. Whenever the title to any lands selected under the provisions of this act shall become vested in the State of Washington by the acceptance and approval of the lists of lands so selected, or other proper action of the United States, the governor, on behalf of the State of Washington, shall execute and deliver to the United States a deed of conveyance of the lands of the state relinquished under the provisions of this act, which deed shall convey to and vest in the United States all the right, title and interest of the State of Washington therein.

AN ACT granting and confirming to purchasers of certain shore lands the title to shore lands, including those uncovered by the artificial lowering of the waters upon which they abut, and providing for the setting apart and donating for public services certain shore lands. Approved March 25, 1913. Laws '13, ch. 183.

477 §383. **Shore Lands Defined—Lake Washington.** §1. In every case where the State of Washington has heretofore sold to any purchaser from the state any second class shore lands bordering upon navigable waters of this state by description wherein the water boundary of the land so purchased is not defined, such water boundary shall be held and is hereby declared to be the line of ordinary navigation in such water; and whenever such waters have heretofore been or shall hereafter be lowered by any action done or authorized either by the State of Washington or the United States such water boundary shall thereafter be held and is hereby declared to be the line of ordinary navigation as the same shall be found in such waters after such lowering, and there is hereby granted and confirmed to every such purchaser, his heirs and assigns, all such lands: Provided, however, That this act shall not apply to such portions of such second class shore lands which shall as hereinafter provided be selected by the commissioner of public lands of the State of Washington for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes: Provided, further, That all shore lands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shore lands southerly along the westerly shore of said

lake to a line three hundred feet south of and parallel with the east and west center line of section 35, township 24 north, range 4 east, W. M., are hereby reserved for public uses and are hereby granted and donated to the city of Seattle for public park, parkway and boulevard purposes, and as a part of its public park, parkway and boulevard system and any diversion or attempted diversion of such lands so donated from such purposes shall cause the title to said lands to revert to the state.

477 §385. **Selections and Reservations.** §2. That within twelve months after the taking effect of this act it shall be the duty of the commissioner of public lands to survey such second class shore lands and in platting such survey to designate thereon as selected for public use all of such shore lands as in the opinion of said commissioner of public lands is available, convenient or necessary to be selected for the use of the public as harbor areas and sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys and other public purposes. Upon the filing of such plat in the office of the commissioner of public lands, the title to all harbor area so selected shall remain in the state, the title to all selections for streets, avenues and alleys shall vest in any city or town within the corporate limits of which they may be then situate, otherwise in the county in which situate, the title to and control of any lands so selected and designated upon such plat for parkway and boulevard purposes shall, if the same lie outside of the corporate limits of any city or town and if the same form a part of the general parkway and boulevard system of a city of the first class, be in such city, the title to all selections for commercial waterway district purposes shall vest in the commercial waterway district in which situate, or for which selected, and the title to all selections for slips, docks, wharves, warehouses and other public purposes shall vest in the port district if they be situate in a port district, otherwise in the county in which situate.

TITLE—STATE LIBRARY.

481 §5. **Salary of Librarian.** §3. The state librarian shall receive an annual salary of fifteen hundred dollars, to be paid monthly, and the state auditor shall draw warrants on the state treasurer therefor. R&B §6958; L. '13, ch. 72.

TITLE 485—STATE OFFICERS AND BOARDS.

485 §33.

Taxpayer cannot complain of misuse of funds by state officer—nor in case authority of state is hindered, *Bilger v. State* 63 W. 457.

485 §95.

Does not violate Const., Art. 11, §12, *State ex rel. Clausen v. Burr*, 65 W. 524.

485 §101.

Verification before notary sufficient where no form prescribed, *Frasier v. Cowlitz*, 67 W. 312.

485 §163.

Fund cannot be invested in capitol bonds, *State Capitol Com'n v. Board*, 74 W.

AN ACT creating a state board of park commissioners and defining their duties, privileges and authority. Emergency. Approved March 19, 1913. Laws '13, ch. 113.

485 §303. **State Park Commission.** §1. A state board of park commissioners is hereby created to consist of the governor, state land commissioner, state auditor and state treasurer, and one other person to be appointed by the governor.

485 §305. **Duties.** §2. Said state board of park commissioners shall have authority to receive and accept donations of lands for state park purposes and shall have the management and control of all lands donated or acquired for state park purposes, and may from time to time recommend to the legislature the purchase or condemnation of lands for state purposes.

485 §307. **Expenses.** §3. The members of said board shall serve without compensation, except necessary traveling expenses.

AN ACT providing for the protection of incompetents, children and animals, and creating a state bureau therefor, defining its powers and duties. Approved March 18, 1913. Laws '13, ch. 107.

485 §309. **State Humane Bureau.** §1. There is hereby created a bureau, which shall be known as the State Humane Bureau, which bureau shall consist of the governor, the superintendent of public instruction, the attorney general, and two members to be appointed by the governor.

485 §311. **Duties.** §2. It shall be the duty of said bureau to promote and aid in the enforcement of the laws for the prevention of wrongs to children, idiots, imbeciles and insane, feeble-minded and defective persons, and persons who by reason of age or for any other reason are helpless or unable to care for themselves; and to promote and aid in the enforcement of the laws for the prevention of cruelty to animals; to promote the organization of county and other local societies to aid such bureau in carrying out the provisions of this act, and to appoint local and state agents for that purpose; to aid such local societies and agents in carrying out the provisions of this act; and to promote the growth of education and sentiment favorable to the enforcement of the laws hereinabove enumerated.

485 §313. **Meetings.** §3. The said bureau shall hold an annual meeting on the second Monday in November in each year, at the state capitol, for the election of officers and for the transaction of such other business as will aid in carrying out the provisions of this act.

485 §315. **Reports to Be Published.** §4. Said bureau shall make and file, in the office of the secretary of state, on or before the first Monday in January of each year, a report of its proceedings for the preceding year, with statistics showing the accomplishments of the bureau and its agents, and the county and local societies organized under the advice and supervision of the bureau, together with such recommendation as the bureau may deem advisable for the further protection of incompetents, children and animals; which report shall be edited and published as are the reports of other state officers.

485 §317. **Officers.** §5. The governor shall be president of said bureau, and said bureau may elect a secretary, prescribe his duties, not inconsistent with the provisions of this act, and fix his compensation; and may appoint and employ such other subordinate agents as it may deem advisable, define their duties and fix their compensation.

TITLE 489—STATE REFORMATORIES.

Supplementary—AN ACT relating to the commitment of persons to the Washington State Training School, and to their discharge therefrom. Approved March 19, 1913. Laws '13, ch. 111.

489 §79. **Age of Discharge.** §1. Each boy or girl committed to the State Training School in the manner provided by law, shall remain there until he or she arrives at the age of twenty-one years unless sooner paroled or legally discharged. The discharge of any boy or girl having arrived at the age of twenty-one years shall be a complete release from all penalties incurred by conviction of the offense for which he or she was committed.

AN ACT establishing a state school for girls in conjunction with the Washington State Training School, authorizing the purchase of a site and the erection of buildings and making an appropriation therefor, regulating the management of and prohibiting interference with the property, inmates, management and discipline thereof and providing penalties for violations thereof. Approved March 22, 1913. Laws '13, ch. 157.

489 §81. **State School for Girls.** §1. That there be established an institution which shall be known as the State School for Girls.

489 §83. **Under Board Control—Employees.** §3. The government, control and business management of such school shall be vested in the state board of control. The board shall, with the approval of the governor, appoint a suitable superintendent of said school and shall designate the number of

subordinate officers and employes to be employed, and fix their respective salaries. and have power, with the like approval, to make and enforce all such rules and regulations for the administration, government and discipline of the school as they may deem just and proper, not inconsistent with this act. The superintendent and all subordinate officers of the school shall be women: Provided, however, If a married woman be appointed superintendent or to any subordinate position, the husband of such appointee may, with the consent of the board, reside at the institution, and may be assigned such duties or employment as the board may prescribe.

489 §85. **Superintendent, Bond.** §4. Before entering upon the discharge of her duties, the superintendent shall give a surety bond payable to the State of Washington in such sum as the board of control shall prescribe, to be approved by the said board, conditioned for the faithful performance of her duties, and that she will faithfully account for all moneys, property and effects of the institution or the inmates intrusted to her care.

489 §87. **Duties.** §5. The superintendent, subject to the direction and approval of the board of control shall: (1) Have general supervision and control of the grounds and buildings of the institution, the subordinate officers and employes, and the inmates thereof, and all matters relating to their government and discipline; (2) make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the board of control, as may seem to her proper or necessary for the government of such institution and for the employment, discipline and education of the inmates; (3) exercise such other powers, and perform such other duties as the board of control may prescribe; and (4) have power to engage and remove all employes, subject to the approval of the board of control.

489 §89. **Admission to School.** §6. Any girl more than ten and under eighteen years of age, who has been found delinquent under the juvenile delinquency law of this state, may be committed by the court to the state school for girls, there to remain until twenty-one years of age, unless sooner paroled or discharged as provided in sections 8 and 9 of this act, and such commitment shall not be subject to modification or revocation.

489 §91. **Commitments.** §7. The superior court shall cause a memorandum to be made and kept of the name, age, birthplace, occupation, last place of residence, and previous record of such girl, and the names and places of residence of the parents, next of kin or guardian of such girl, a copy of which shall be furnished to the superintendent at the time of the commitment to the school. The court shall find and determine the age of the girl, which shall be stated in the order for commitment. Such finding shall be conclusive evidence as to such age in any action to recover damages for detention and shall be presumptive evidence in any other inquiry, action or proceeding.

489 §93. **Paroles.** §8. The board of control, acting with the superintendent, shall, under a system of marks, or otherwise, fix upon a uniform plan by which girls may be paroled or discharged from the school, which system shall be subject to revision from time to time. Each girl shall be credited for personal demeanor, diligence in labor or study and for the results accomplished, and charged for derelictions, negligence or offense. The standing of each girl shall be made known to her as often as once a month.

489 §95. **Girl Entitled to Parole—Enticing, Penalty.** §9. Every girl shall be entitled to a trial on parole before reaching the age of twenty years, such parole to continue for at least one year unless violated. The superintendent and resident physician, with the approval of the board of control, shall determine whether such parole has been violated. Any girl committed to the school who shall escape therefrom, or who shall violate a parole, may be apprehended and returned to the school by any officer or citizen on written order or request of the superintendent. Any person who shall go upon the school grounds except on lawful business, or by consent of the superintendent, or who shall entice any girl away from the school, or who shall in any way interfere with its management or discipline, shall be guilty of a misdemeanor.

489 §97. **Restrictions on Admission.** §10. No girl shall be received in the State School for Girls who is not of sound mind, or who is subject to epileptic

or other fits, or is not possessed of that degree of bodily health which should render her a fit subject for the discipline of the school. It shall be the duty of the court committing her to cause such girl to be examined by a reputable physician to be appointed by the court, who will certify to the above facts, which certificate shall be forwarded to the school with the commitment. Any girl who may have been committed to the school, not complying with the above requirements, may be returned by the superintendent to the court making the commitment, or to the officer or institution last having her in charge. The board of control shall arrange for the transportation of all girls to and from the school.

489 §99. **Branches Taught.** §11. It shall be the duty of the superintendent, subject to the approval of the board of control, to employ teachers, and as far as practicable, to instruct the girls in all of the branches usually taught in the grades of the common schools of the state, also in such trades and vocational occupations as may be found desirable. The educational work of the school shall be a part of the educational system of the state, and as such shall be under the supervision of the state board of education. Only those certified by the state superintendent of public instruction shall be employed as teachers.

489 §101. **Girls May Be Employed.** §12. The superintendent shall have power to place any girl under the age of eighteen years at any employment for account of the institution or the girl employed, and receive and hold the whole or any part of her wages for the benefit of the girl less the amount necessary for her board and keep, and may also, with the consent of any girl over fourteen years of age, and the approval of the state board of control endorsed thereon, execute indentures of apprenticeship, which shall be binding on all parties thereto. In case any girl so apprenticed shall prove untrustworthy or unsatisfactory, the superintendent may permit her to be returned to the school, and the indenture may thereupon be cancelled. If such girl shall have an unsuitable employer, the superintendent may, with the approval of the board of control, take her back to the school, and cancel the indenture of apprenticeship. All indentures so made shall be filed and kept in the school. A system may also be established, providing for compensation to girls for services rendered, and payments may be made from time to time, not to exceed in the aggregate to any one girl the sum of twenty-five dollars for each year of service.

TITLE 493—STATE ROADS.

AN ACT providing for the appointment and qualification of an assistant highway commissioner. Approved March 3, 1913. Laws '13. ch. 26.

493 §2. **Assistant Commissioner—Oath—Bond.** §1. That the highway commissioner may appoint an assistant who shall act as chief clerk in his office, and such assistant shall have power to perform any act or duty relating to the office of highway commissioner that the commissioner has, and, in case of vacancy by death or resignation of the highway commissioner, said assistant shall perform the duties of said office until the vacancy is filled. Such assistant shall subscribe, take and file the oath of office provided by law for other state officers before entering upon the performance of his duties. The principal shall be responsible under his official bond for all of the official acts of the assistant, and may revoke such appointment at his pleasure, and may require his assistant to give him a bond in such sum as the principal may determine, which bond shall be made, executed, approved and filed as other state official bonds.

Supplementary—AN ACT relating to the construction of state roads. Approved March 20, 1913. Laws 13, ch. 132.

493 §14. **Work, How Done.** §1. The state highway board may in its discretion cause any state road to be constructed, either under contract as now provided by law or by force account. In case the construction is done by force account, the work thereon shall be done by convict labor to the extent

that the same may be available and advantageously used, and such free labor may be employed as may be necessary to successfully carry on the work. If free labor is employed the state highway board shall by resolution entered on its records state the reasons therefor.

493 §14a. Machinery, Etc., May Be Purchased. §2. Whenever any money shall be appropriated for any state road or roads, and the state highway board shall have determined to construct the same by convict labor and free labor as aforesaid, the state highway board may in its discretion purchase road-making machinery to be used in such construction work. The board shall, prior to entering upon any such construction work, determine what roads shall be improved by force account, and estimate the amount and cost of machinery that can be used in the construction of all of the roads, to the end that the machinery may be used on different roads. When the board has decided how much machinery can be so used, it may purchase the same and pay for it from the appropriation made for different roads, in proportion to the amount of use that will be made of it on each road.

493 §25. Tax Levy. §2. For the purpose of raising revenue to construct and repair highways and bridges, the proper state officers shall levy and collect a tax of one and one-fourth mills upon all of the property in the state subject to taxation for the fiscal year beginning March 1, 1913, and for each fiscal year thereafter shall levy and collect a tax of one mill. The fund provided by such levy shall be placed in said public highway fund: Provided, however, That nothing in this act contained shall have the effect or be construed to alter or modify in any particular any tax levy made or proceeding had or to be had for the collection of any tax heretofore levied or imposed under or pursuant to the provisions of any former or existing laws: And provided further, That five per centum of the taxes collected as herein authorized shall be set aside by the state treasurer and used exclusively under the direction of the highway commissioner for the repair and maintenance of state roads that shall have been established and constructed. R&B §5898, L. '13, ch. 64.

493 §39. Quarries Rotary Fund—Superintendent of Quarries. §8. All moneys received from the sale of products of the state quarries and all moneys that may be received on account of fire insurance and settlement of fire losses at such quarries shall be paid into the state treasury and shall be kept in a fund to be known as the "Quarries Rotary Fund." Such fund shall be used for the purpose of maintaining such rock quarries and all necessary expenses in connection therewith, including the repayment as herein provided, and the cost and expenses of transporting to and from, keeping and guarding the convicts working therein, the payment of the fire insurance premiums and for making such permanent improvements as the state highway commissioner shall deem necessary to be expended on the order of the state highway commissioner: Provided, however, No warrant shall be issued against said fund in excess of the amount remaining in such fund at the time of the issuance of the warrant. All warrants drawn against this fund shall be paid in the same manner as the state's general fund warrants are paid. All moneys heretofore paid out of the state general fund and the public highway fund for the purchasing and installing of crushing machinery, appliances, tools and cars for the maintenance of the state quarries, shall be repaid to the respective funds from which used, whenever the state highway commissioner shall deem sufficient funds have been received from the sale of the product of such quarries over and above the amount required for the operation of such plants. To secure the efficient, economical and satisfactory administration and maintenance of the several rock quarries under the jurisdiction of the state highway commissioner, the state highway commissioner is hereby authorized to appoint a superintendent of quarries who shall have and exercise such powers and perform such duties in connection with the various rock quarries of the state as shall be from time to time prescribed by the state highway commissioner. He shall receive an annual salary of not more than two thousand dollars and his necessary traveling expenses, to be paid out of the quarries rotary fund herein established, and in case there is insufficient in that fund he shall be paid out of the state highway fund. He

shall be subject at all times to the jurisdiction, control and direction of the highway commissioner, and shall appoint such assistants with such compensation as shall be determined by the state highway commissioner. R&B §5914; L. '13, ch. 164.

AN ACT authorizing the working of persons being held under sentence in the state penitentiary upon the construction and improvement of highways, and providing for the control, management and expense of the same. Approved March 19, 1913. Laws '13, ch. 114.

493 §45. **Convict Labor on Roads.** §1. Whenever there are persons confined in the state penitentiary who are physically able to perform manual labor upon the public highways, and who shall not be engaged in other work required by the state board of control, the same may be employed upon the construction and improvement of the public highways within the state.

493 §46. **Report of Convicts to Highway Commissioner.** §2. The board of control shall monthly certify to the state highway commissioner the number of persons in the institution named who may be used for the work authorized under this act, and the state highway commissioner shall, whenever possible, use such persons in the building or repair of public roads.

493 §46a. **Supervision and Expense.** §3. The work done, as in this act provided, shall be under the direction and supervision of the state highway commissioner, but the control and management of all the persons taken from the said penitentiary shall be under the supervision of the state board of control. The expense of the care, maintenance and transportation of all persons so taken from said institution to work upon the roads shall be paid out of the fund or funds authorized to be used upon the particular road upon which such work is being done: Provided, That a part of such expense equalizing twenty-five cents per day per person so employed shall be paid out of the appropriation for the maintenance of the particular institution from which such persons are taken.

493 §47.

Roads classified and described, act '13 493 §75, Supp.

AN ACT relating to public highways, classifying the same and naming and fixing the routes of certain state roads. Approved March 12, 1913. Laws '13, ch. 65.

493 §75. **Primary and Secondary Roads.** §1. That the highways of the State of Washington shall be divided into two classes, called primary and secondary roads.

493 §75.

Former acts describing state roads 493 §47.

493 §77. **Primary Roads.** §2. The primary roads shall be as follows:

a. A highway starting at the international boundary line at Blaine, Washington; thence southerly by the most feasible route through the cities of Bellingham, Mount Vernon, Everett, Seattle, Renton, along the easterly side of the White River Valley through Kent, Auburn, Tacoma, Olympia, Tenino, Centralia, Chehalis, to the southern boundary line at the city of Vancouver, Washington, to be known as The Pacific Highway.

b. A highway starting from the Pacific Highway at Renton, Washington; thence over the most feasible route by the way of Snoqualmie Pass into the Yakima River Valley; thence by way of Wenatchee, over the most feasible route, through Waterville and Spokane, to the state boundary, which shall be known as the Sunset Highway.

c. A highway connecting with the Sunset Highway at or in the vicinity of the city of Ellensburg; thence by way of North Yakima, Kennewick, Pasco, Walla Walla, Dayton, crossing the Snake River at either Almota or Penawawa, Colfax, Rosalia, Spokane, Deer Park, Loon Lake, Colville, to the international line at boundary, which shall be known as the Inland Empire Highway.

d. A highway known as the eastern route of the Inland Empire Highway, shall commence at or in the vicinity of the town of Dayton, thence over the

most feasible route, through the town of Pomeroy, to the Idaho and Washington state line. where said line crosses the steel bridge known as the Lewiston and Clarkston bridge, and shall be known as the first division of the eastern route. The second division of the eastern route shall commence at a point on the Idaho and Washington line where the same crosses the public road known as the Lewiston and Uniontown road, thence over the most feasible route through Pullman, Palouse and Garfield, thence in a northerly direction, joining the Inland Empire Highway at the most practical point, to be determined by the highway commissioner.

e. A highway connecting with the Inland Empire Highway at Pasco, Washington; thence by the most feasible route through Connell, Ritzville, Sprague, and Cheney to Spokane, Washington, to be known as the Central Washington Highway.

f. A highway starting at a connection with the Pacific Highway at Auburn, Washington; thence along the most feasible route through Enumclaw, following the route of former State Road No. 1 to North Yakima, Washington. At a point in Pierce county where said State Road No. 1 leaves the main channel of White River a branch shall take off which shall follow up the White River Valley to a connection at the most practicable point with the Rainier National Park. Another branch shall take off where Road No. 1 leaves the American River and shall follow said American River by the most feasible route to a connection with the Rainier National Park. this highway and its branches to be known as the McClellan Pass Highway.

g. A highway starting from the Pacific Highway in the city of Tacoma; running thence southerly by the most feasible route, to or near the town of Elbe, where it will branch, one section connecting with the government road in Rainier National Park, at or near Ashford, Pierce county, and the other by the most feasible route through Mineral, Morton, Klickitat Prairie, Forest, Chehalis, Pe Ell, South Bend, to the ocean beach at Holman, in Pacific county, which shall be known as the National Park Highway.

h. A highway starting from the Pacific Highway in Olympia, Washington, combining roads numbers nine (9) and fourteen (14), and completely circling the Olympic peninsula, through the cities of Shelton, Hoodspott, Duckabush, Quilcene, Port Angeles, Hoquiam, Montesano, Elma, and McCleary, re-uniting with the Pacific Highway at Olympia, which shall be known as the Olympic Highway.

493 §99. **Secondary Roads.** §3. All other state highways heretofore or hereafter established that are not designated to be primary highways, shall be classed as secondary highways.

493 §101. **Expense of Primary Roads.** §4. All primary highways when constructed shall be maintained at the expense of the public highway fund of the state, and shall be under the immediate supervision and control. both for construction and maintenance of the state highway department.

493 §103. **Expense of Secondary Roads.** §5. All secondary highways when constructed shall be maintained by the counties in which they are located, and in the event that any county does not desire to maintain such secondary highway it shall so indicate to the highway department of the state by the passage of a formal resolution to that effect spread upon the records of said board of county commissioners, a copy of which shall be forwarded to the office of highway commissioner; whereupon, said highway, unless it is a way of necessity whereby certain persons residing thereon are connected with the county highway, the same shall be abandoned as a public highway, and the right-of-way revert to the abutting property. In the event that it is a private way of necessity the maintenance and up-keep of said highway shall devolve upon the persons whom it serves.

493 §105. **Localities May Expend Funds.** §6. Nothing in this act shall be construed to prevent the authorities of any county or road district from expending the road funds of such county or road district upon primary or secondary highways either for construction, maintenance or right-of-way, and they are hereby empowered so to do, the only exception being that when any section of the primary highway has been constructed by the state any

expenditures made upon said portion of said primary highway shall be under the direction of the state highway commissioner.

493 §106. **Former Routes Disregarded.** §7. In determining the question of whether or not any particular route is the most feasible, no attention need be paid to routes heretofore selected for state highways.

493 §107. **Width of Roads.** §8. All primary highways when graded shall be graded so that they shall have a running surface of not less than sixteen (16) feet in width.

TITLE 501--TAXATION.

501 §17.

Investment bonds issued by a trust company representing ownership of real property are assessable as real estate when owned by a bank, *Dexter Horton Nat. Bank v. McKenzie*, 69 W. 314.

501 §21.

Excessive valuation on leasehold of Metropolitan Building Co. reduced, *Metropolitan Building Co. v. King County*, 64 W. 615 id. 72 W.

501 §37. **Exemptions from Taxation.** §5. All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

First. All lands used exclusively for public burying grounds or cemeteries, all churches built and supported by donations whose seats are free to all, and the grounds whereon such churches are built, not exceeding one hundred and twenty feet by two hundred feet in quantity, together with a parsonage. The parsonage need not be on land contiguous to the church property if the total area exempted does not exceed the area above described: Provided, That such grounds are used wholly for church purposes and not otherwise. Also, all property of Young Men's Christian Associations and Young Women's Christian Associations, or any exhibit deposited in the State Historical Society building, which shall be wholly used, or to the extent solely used, for the religious purposes of such association.

Second. All property, whether real or personal, belonging exclusively to any school district, county, municipal corporation, the state or to the United States.

Third. All fire engines and other implements used for the extinguishment of fires, with the building used exclusively for the safekeeping thereof, and for the meetings of fire companies, providing that such belongs to any town or fire company organized therein.

Fourth. All free public libraries, orphanages, orphan asylums, institutions for the reformation of fallen women, homes for the aged and infirm, and hospitals for the care of the sick, when such institutions are supported in whole or in part by the public donations or private charity, and all of the income and profits of such institutions are devoted, after paying the expenses thereof, to the purposes of such institutions, and the grounds, whenever such libraries, orphanages, institutions, homes and hospitals are built and when used exclusively and not otherwise for the purposes in this subdivision enumerated. In order to determine whether such libraries, orphanages, institutions, homes and hospitals are exempt from taxes, within the true intent of this chapter, the state board of health, the county and city authorities of the county and city wherein such institutions are respectively situated, shall have access to the books of such institutions, and the institution claiming exemption shall provide by its articles of incorporation that the mayor of the city and the chairman of the board of county commissioners wherein such institution is located shall be ex-officio trustee thereof and shall be notified of each and every meeting thereof, and shall have the same powers as a trustee of such institution. And the superintendent or manager of the library, orphanage, institution, home or hospital claiming exemption from taxation under this chapter shall make oath before the assessor that the income and the receipts thereof, including donations to it, have been applied to the actual expenses of maintaining it, and to no other purpose. He shall also, under oath, make annual report to the state board of health

of its receipts and disbursements, specifying in detail the sources from which the receipts have been derived and the object to which disbursements have been applied. and shall furnish in the said report full and complete vital statistics for the use and information of the state board of health, who may publish the same in its annual report.

Fifth. All fruit trees, except nursery stock and forest trees artificially grown.

Sixth. All ships, vessels and boats in actual construction and all materials especially designed and set apart for the construction of any such ship, vessel or boat in process of building within this state, shall be exempt from taxation.

Seventh. The personal property of each head of a family or widow liable to assessment and taxation of which such individual is the actual and bona fide owner to an amount of three hundred dollars: Provided, That each person shall list all of his personal property for taxation and the county assessor shall deduct the amount of the exemption authorized by this section from the total amount of the assessment and assess the remainder. R&B §9098, L. '13, ch. 117.

501 §37.

When property is conveyed to State prior to levy it is exempt, *State v. Snohomish County*, 71 W.

Does not exempt parsonage located on a lot entirely separate from that of the church, *Foley v. Oberlin Congregational Church*, 67 W. 280.

501 §81.

Superseded by following section of Code.

501 §83.

Business property investment bonds are realty, *Dexter Horton Nat. Bk v. McKenzie*, 69 W. 314.

Bank stock is property and subject to constitutional provision, overruling *Pac. Nat. Bk. v. Pierce County*, 20 W. 675, and *Ridpath v. Spokane County*, 23 W. 436, *Spokane & East. Tr. Co.*, 70 W. 48.

501 §113. **How Valuations Made.** §42. All property shall be assessed at not to exceed fifty per cent. of its true and fair value in money. In determining the true and fair value of real or personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt as a criterion of value the price for which the said property would sell at auction, or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made. The true cash value of property shall be that value at which the property would be taken in payment of a just debt from a solvent debtor. In assessing any tract or lot of real property, the value of the land, exclusive of improvements, shall be determined; also, the value of all improvements and structures thereon, and the aggregate value of the property, including all structures and other improvements, excluding the value of crops growing on cultivated lands. In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such price as such property, including the mine or quarry, would sell at a fair, voluntary sale for cash. Taxable leasehold estates shall be valued at such a price as they would bring at a fair, voluntary sale for cash. R&B §9112; L. '13, ch. 140.

501 §113.

Discrimination in rate of assessment not allowed, *Savage v. Pierce County*, 68 W. 623.

501 §205.

A tax foreclosure sale passes the fee freed from a prior easement for a private road, where the owner of the easement prior to foreclosure did not seek a segregation of the tax, *Hanson v. Carr*, 66 W. 81.

501 §211.

Does not apply to payments by parties claiming to own another's land and making payment for themselves, *Vietzen v. Otis*, 63 W. 411.

501 §215.

Property acquired by U. S. in May and July not subject to lien, *U. S. v. Pierce County*, 193 Fed. 529.

501 §237.

Inclusion of prior taxes paid voids certificate—no equitable relief, *Trumbull v. Bruce*, 64 W. 644.

501 §237a.

Certificate is prima facie evidence that property was taxable, *Foley x. Oberlin Church*, 67 W. 280.

501 §238.

Owner sent money but void deed was made, *Loving v. Maltble*, 64 W. 336.

Omission of reference to first publication not fatal, *Old Republic Min. Co. v. Ferry County*, 69 W. 600.

Former cases holding foreclosure a proceeding in rem affirmed—wrong name, *Peterson v. Toler*, 71 W.

Tenant in common fraudulently caused taxes to be assessed to his cotenant—foreclosure invalid, *Dahlstrom v. Beard Fruit Co.*, 73 W.

Purchasers at tax sales under L. '91 p. 167 §5 have no lien if filing not made, *Ready v. Sound Inv. Co.*, 64 W. 422.

Tax foreclosures valid affirming *Ontario Land Co. v. Yordy & Ontario Land Co. v. Wilfong*, 223 U. S. 543.

501 §241.

Descriptions on tax rolls sufficient in foreclosure by county, *Continental Distributing Co. v. Smith*, 73 or 74 W.

501 §245.

A tender of taxes by a minor heir ipso facto acts as a redemption of land from tax sale, *Seattle Land Co. v. Blum*, 71 W.

Tenant in common pays for all—contribution, *Trumbull v. Bruce*, 64 W. 644.

501 §247.

Deed conclusive against omissions of recitals in record, *Old Republic Co. v. Ferry County*, 69 W. 600.

Misdescription in sale notice good in collateral attack—sale of mining claims in solido—date of first publication sufficient, *Old Republic Co. v. Ferry County*, 69 W. 600.

501 §263.

If tax has been paid tax judgment may be collaterally attacked, *Martin v. Rantert*, 67 W. 325.

501 §273.

Does not preclude county from allowing redemption in case of doubtful sales, *Franklin County v. Carstens*, 68 W. 116.

501 §281.

Valuation of railroad property by Public Service Commission obtains, *State ex. Oregon R. & N. Co. v. Clausen*, 63 W. 535.

501 §373.

Officer stating tender would be refused does not exclude failure to make same, *Old Republic Co. v. Ferry County*, 69 W. 600.

TITLE 505—TOWNSHIP ORGANIZATION.

505 §37. **Powers of Town Meetings.** §19. The electors of each town have power, at their annual town meeting: First, To determine the number of poundmasters, and location of pounds. Second, To select such town officers as are required to be chosen. Third, To direct the institution or defense of actions in all controversies where such town is interested. Fourth, To direct such sums to be raised in such town for prosecuting or defending such actions as they may deem necessary. Fifth, To make all rules and regulations for ascertaining the sufficiency of fences in such town and for impounding animals. Sixth, To determine the time and manner in which certain domestic animals may be permitted to go at large. Seventh, To impose such penalties on persons offending against any rules or regulations established by said town, except such as relate to the keeping and maintaining of fences, as they think proper, not exceeding ten dollars for each offense, unless herein otherwise provided. Eighth, To apply such penalties, when collected, in such manner as they may deem most conducive to the interests of the town. Ninth, To vote to raise such sums of money for the repairs and construction of roads and bridges as they deem necessary, and to determine the amount thereof to be assessed by the supervisors as labor tax and the amount thereof to be assessed and collected as other town taxes. Also to vote such sums of money for other necessary town charges as they deem expedient: Provided, That they may, at their annual town meeting, direct such an amount of the poll and road tax of the town to be expended on the highways in an adjoining town as they deem conducive to the interests of the town, which labor and tax shall be expended under the direction of the supervisors of the town furnishing the same. Tenth, To vote by ballot to establish a town library for the use of the people thereof and when established to make all by-laws, rules and regulations necessary for the management thereof; to raise a sum not exceeding three hundred (\$300.00) dollars in any one year for the providing of books, furnishing a place to keep such library, and pay a librarian for his services; said sum to be expended on the direction of the board. Eleventh, To instruct by vote the board to purchase grounds for a town cemetery; to limit the price to be paid therefor, to raise a tax for payment thereon and to establish rules for the care and management of the same. Twelfth, To authorize the licensing of dogs. Thirteenth, To make such by-laws and regulations as may be deemed conducive to the peace, good order and welfare of the town; to license, tax, regulate and control hawkers,

peddlers, auctioneers, shows, theatricals, circuses, lawful games, merry-go-rounds, ferris wheels, or other amusement devices or places of amusement. Fourteenth, To acquire land containing pits of gravel or quarries of stone needed by the town for road construction, proceeding in the same manner that land is condemned for road and other public purposes. L. '13, ch. 142; '11, 113; '09, 74.

505 §73. Overseers and Poundmasters Must Qualify. §37. Every person elected or appointed to the office of overseer of highways or poundmaster, before he enters on the duties of his office, and within two weeks after he is notified of his election or appointment, shall file in the office of the town clerk a notice signifying his acceptance of such office. A neglect to file such notice shall be deemed a refusal to serve. Every person elected or appointed to the office of overseer of highways, before he enters upon the duties of his office, and within two weeks after he is notified of his election or appointment shall take and subscribe before the town clerk or justice of the peace an oath to support the constitution of the United States and of the State of Washington, and faithfully to discharge the duties of his office to the best of his ability. Such overseer of highways shall also execute and deliver to the supervisors of the town and their successors in office a bond, with one or more sureties, to be approved by the board of supervisors, in an amount determined by said board, conditioned for the faithful discharge of his duties. L. '13, ch. 142.

505 §75. Treasurer's Bond. §38. Every person appointed or elected to the office of treasurer, before he enters upon the duties of his office, shall execute and deliver to the supervisors of the town and their successors in office, a bond, with one or more sureties, to be approved by the board of supervisors, in double the probable amount of money to be in his hands at any one time, which amount shall be determined by said board, conditioned for the faithful execution of his duties as such treasurer. L. '13, ch. 142.

505 §83. Failure to Give Bond is Refusal of Office. §42. If any person elected or appointed to the office of treasurer, constable or overseer of highways does not give such bond and take such oath as is required above, within the time limited for that purpose, such neglect shall be deemed a refusal to serve. L. '13, ch. 147.

505 §87. Interest in Contracts—Penalty. §44. No town officer shall become a party to or interested, directly or indirectly, in any contract made by the board of which he may be a member: Provided, This shall not be construed to prohibit the employment of a team or teams belonging to a township officer when a required number of teams, owned in the township, are not otherwise obtainable, or the employment of a township officer as a day laborer. Every contract or payment voted for or made contrary to the provisions of this title is void and any violation of this section hereafter committed shall be a malfeasance in office, which will subject the officer so offending to be removed from office. L. '13, ch. 42.

505 §91. Vacancies, How Filled. §46. The board of county commissioners of any county may, for sufficient cause shown to them, accept the resignation of any town officer in any township in their county, and whenever they accept any such resignation, they shall forthwith appoint another elector of the town to the office, and shall give notice thereof in writing to the person so appointed and to the town clerk; or in the case of a vacancy in the office of town clerk or overseer of highways, to the chairman of the board of supervisors of the town. L. '13, ch. 142.

505 §95.

within a township, *Strunz v. Spokane*

Does not deprive county commissioners County, 67 W. 235.
of power to establish highways wholly

505 §143. Money from County Treasurer—Pay. §72. The town treasurer shall from time to time draw from the county treasurer such moneys as have been received by the county treasurer for the use of his town, and on receipt of such moneys shall deliver proper vouchers therefor. Each town

treasurer shall be allowed and entitled to retain, as his official compensation, one per centum of all moneys received by him from the county treasurer, and one per centum of all moneys paid out in the redemption of warrants: Provided, however, That the compensation of said treasurer shall in no case exceed the sum of one hundred dollars in any one year. L. '13, ch. 142.

505 §152. **Township Depositary.** §9. Each township treasurer shall annually within thirty days after taking office, designate some bank of the state as a depository of all public funds held and acquired to be kept by him as such treasurer: Provided, That the bank designated by the township treasurer shall furnish, if required by the board of supervisors, to the township an indemnity bond equal in amount to the official bond of said treasurer, such designation shall be filed in writing as part of the minutes of the township board. L. '13, ch. 142.

505 §165. **Levy of Taxes.** §83. All taxes shall be levied or voted in specific amounts, and the rates per centum shall be determined from the amount of property, as equalized by the county board of equalization each year, except such general taxes as may be definitely fixed by law. The taxes voted by townships, and not previously returned to the county auditor, and all delinquent poll, road and other taxes to be collected by any town officer, and due and unpaid, shall be certified by the proper authorities to the county auditor on or before the first day of November in each year. There shall be levied annually on each dollar of taxable property in the state [township] other than such as by law is otherwise taxed), as assessed and entered on the tax lists for the several purposes enumerated, taxes at the rates specified as follows: For township purposes, such sum as may be voted at any legal town meeting, the rate of which shall not exceed, exclusive of such sums as may be voted at the annual town meeting for road and bridge purposes, two mills in any township having a taxable valuation of one hundred thousand dollars or more, and the amount of which shall not exceed one hundred and fifty dollars in any township having a taxable valuation less than one hundred thousand dollars. and the rate of such tax shall not exceed one-half of one percent. in any township. The rate of tax for road and bridge purposes in any township shall not exceed eight mills per dollar; Provided, That nothing in this section shall be construed to prevent the township supervisors or corporate authorities of any town from levying any tax which by any special law they may be authorized to levy. L. '13, ch. 142.

505 §166. **Fund Set Aside When Organized.** §10. Whenever any county of this state shall have adopted township organization it shall be the duty of the board of county commissioners of such county to set aside from the levy of the current year the following sums, which shall be paid to the township treasurer in the manner provided by law: To each township for current expenses, one hundred dollars: to each township for township roads and bridges, twenty-five per cent. of the amount levied upon the property of said township for construction and repair of roads and bridges. L. '13, ch. 142.

TITLE 517—VETERINARIANS.

517 §23. **Records—Bond of Treasurer—Fees to be Paid In.** §12. The board shall keep a register of all registered practitioners in the state, setting forth such facts as the board may see fit. All money received or collected by said board or any member or officer thereof during any month shall be turned over before the 10th day of the succeeding month to the state treasurer, together with a verified statement showing the sources from which such money was derived. The treasurer of said board shall give surety bond to be approved and deposited with the auditor of the state in the sum of \$1,000. The cost of said bond shall be paid by the state. R&B §8437; L. '13, ch. 79.

517 §25. **Pay of Board—Vouchers.** §13. Each member of the board of veterinary medical examiners shall receive a compensation of five dollars per day for each day in which he is actually and necessarily engaged in attend-

ance upon the meetings of the board and in going to and returning from the place of meeting and all necessary expenses incurred in attending such meetings. All such compensation and expenses and all other expenses incident to the execution of the provisions of this act shall be paid by the state treasurer upon warrants drawn by the state auditor upon the presentation of proper vouchers to be approved by a majority of said board as in the case of state officers. The secretary and treasurer of the board shall each receive a compensation to be determined by said board and not to exceed \$50 per annum. R&B §8438; L. '13. ch. 79.

517 §35. **Report to Governor.** §18. The board shall render on or before January 1st of each year to the governor a concise statement or report of all matters pertaining to the duties imposed upon the board in this act and making such suggestions as they shall deem expedient and proper. R&B §8443; L. '13, ch. 79.

TITLE 521—WAREHOUSEMEN.

521 §1.

Act repealed L. '13, ch. 52 §11.

521 §3.

A warehouseman who issues a warehouse receipt in exchange for a railroad delivery order without obtaining posses-

sion of the goods is estopped to deny liability for loss of the goods by retaining storage charges and failing to notify the owner for two years, *Nowell v. Seattle Transfer Co.*, 63 W. 685.

AN ACT relating to warehouse receipts, the rights, obligations and liabilities of persons under such receipts, creating liens thereunder and providing for the enforcement of the same, and providing penalties for the violation thereof. Approved March 17, 1913, Laws '13, ch. 99.

Article I—The Issue of Warehouse Receipts.

521 §17. **Who May Issue Receipts.** §1. Warehouse receipts may be issued by any warehouseman, and must be issued in manner and form as provided by this act.

521 §19. **Form of Receipts.** §2. Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

- (a) The location of the warehouse where the goods are stored.
- (b) The date of issue of the receipt.
- (c) The consecutive number of the receipt.
- (d) A statement whether the goods received will be delivered to the bearer, to a specified person or to a specified person or his order.
- (e) The rate of storage charges.
- (f) A description of the goods or of the packages containing them. If the same be issued for wheat it shall specifically state the variety of wheat by name.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made, or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

521 §21. **Terms May Be Inserted.** §3. A warehouseman may insert in

a receipt, issued by him, any other terms and conditions: Provided, That such terms, and conditions shall not:

(a) Be contrary to the provisions of this act.

(b) In any wise impair his obligation to exercise that degree of care in the safe keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own; and any provisions so inserted contrary to the provisions of this act, shall, so far as they conflict with the provisions thereof, be void.

521 §23. **Non-Negotiable Receipt.** §4. A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

521 §25. **Negotiable Receipt.** §5. A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

521 §27. **Duplicate Receipts.** §6. When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

521 §29. **Failure to Mark "Non Negotiable."** §7. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-negotiable" or "not negotiable." In case of the warehouseman's failure to do so, a holder of the receipt who purchased it for value, supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgement of an informal character.

Article II—Obligations and Rights of Warehousemen Upon Their Receipts.

521 §31. **Obligation of Warehousemen.** §8. A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

(a) An offer to satisfy the warehouseman's lien.

(b) An offer to surrender the receipt if negotiable, with such endorsements as would be necessary for the negotiation of the receipt; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgement that they have been delivered, if such signature is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

521 §33. **Justification of Warehouseman.** §9. A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is,

(a) The person lawfully entitled to the possession of the goods, or his agent.

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

521 §35. **Warehouseman's Liability.** §10. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a

right of property or possession in the goods if he delivered the goods otherwise than is authorized by sub-division (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either,

(a) Been requested, by or on behalf of the person lawfully entitled to right of property or possession in the goods, not to make such delivery; or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

521 §37. **Receipts Must be Cancelled.** §11. Except as provided in section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

521 §39. **When Part of Goods Delivered.** §12. Except as provided in section 36, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure, to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

521 §41. **Altered Receipts.** §13. The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was:

(a) Immaterial.

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

321 §43. **Lost or Destroyed Receipts.** §14. Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

521 §45. **Duplicate Receipts.** §15. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

521 §47. **Warehousemen Cannot Set Up Title in Himself.** §16. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage,

or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

521 §49. **Interpleader of Adverse Claimants.** §17. If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

521 §51. **Reasonable Time to Determine Validity of Claims.** §18. If someone other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him, or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

521 §53. **Adverse Title No Defense.** §19. Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

521 §55. **Liability for Non-Existence or Misdescription.** §20. A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

521 §57. **Liability for Care of Goods.** §21. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

521 §59. **Goods Must Be Kept Separate.** §22. Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and re-delivery of the goods deposited.

521 §61. **Fungible Goods May Be Commingled.** §23. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

521 §63. **Liability of Warehouseman.** §24. The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

521 §65. **Attachment or Levy Upon Goods.** §25. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the courts.

521 §67. **Creditors' Remedies.** §26. A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipts or in satisfying the claim by means thereof, as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

521 §69. **Warehouseman's Lien.** §27. Subject to the provisions of section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooping and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods, where default has been made in satisfying the warehouseman's lien.

521 §71. **Enforcement of Lien.** §28. Subject to the provisions of section 30, a warehouseman's lien may be enforced.

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

521 §73. **How Lien Lost.** §29. A warehouseman loses his lien upon goods,

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

521 §75. **Negotiable Receipt Must State Lien Charges.** §30. If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 27, although the amount of the charges so enumerated is not stated in the receipt.

521 §77. **Delivery After Lien Satisfied.** §31. A warehouseman having a lien valid against the person demanding the goods, may refuse to deliver the goods to him until the lien is satisfied.

521 §79. **Lien Does not Preclude Other Remedies.** §32. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

521 §81. **Satisfaction of Lien by Sale.** §33. A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice, if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by

auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

521 §83. **Perishable and Hazardous Goods.** §34. If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort, is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section.

521 §85. **Other Methods of Enforcing Liens.** §35. The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

521 §87. **Effect of Sale.** §36. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

Article III—Negotiation and Transfer of Receipts.

521 §89. **Negotiation of Receipts by Delivery.** §37. A negotiable receipt may be negotiated by delivery.

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank to the bearer.

(c) Where, by the terms of a negotiable receipt, the goods are deliverable

to bearer or where a negotiable receipt has been indorsed in blank to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

521 §91. **By Indorsement.** §38. A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

521 §93. **Transfer of Receipts.** §39. A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

521 §95. **Who May Negotiate Receipt.** §40. A negotiable receipt may be negotiated,

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

521 §97. **Person to Whom Receipt has Been Negotiated.** §41. A person to whom a negotiable receipt has been duly negotiated acquires thereby,

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

521 §99. **Persons to Whom Receipt Has Been Transferred.** §42. A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods, for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

521 §101. **Transfer Without Indorsement.** §43. Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

521 §103. **Warranties on Sale of Receipt.** §44. A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants,

(a) That the receipt be genuine.

(b) That he has a legal right to negotiate or transfer it.

(c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

521 §105. **Indorser Not a Guarantor.** §45. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

521 §107. **No Warranty Implied from Accepting Payment of Debt.** §46. A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

521 §109. **When Negotiation Not Impaired by Fraud, Etc.** §47. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

521 §111. **Subsequent Negotiation.** §48. Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

521 §113. **Negotiation Defeats Vendor's Lien.** §49. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiations be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

Article IV—Criminal Offenses.

521 §115. **Receipt for Goods Not Delivered.** §50. A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a gross misdemeanor.

521 §117. **Receipt Containing False Statement.** §51. A warehouseman or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a gross misdemeanor.

521 §119. **Duplicate Receipts Not so Marked.** §52. A warehouseman or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate" except in the case of lost or destroyed receipt after proceedings as provided for in section 14, shall be guilty of a gross misdemeanor.

521 §121. **Issue for Warehouseman's Goods.** §53. Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly, or in common with others, such warehouseman or any of his officers, agents, or servants who, knowing this ownership issues

or aids in issuing a negotiable receipt for such goods, which does not state such ownership shall be guilty of a gross misdemeanor.

521 §123. **Delivery of Goods Without Receipt.** §54. A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 14 and 36, be found guilty of a gross misdemeanor.

521 §125. **Negotiation of Receipt for Mortgaged Goods.** §55. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a gross misdemeanor.

Article V—Interpretation.

521 §127. **When Rules of Common Law Still Applicable.** §56. In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause shall govern.

521 §129. **Interpretation to Purpose of Uniformity.** §57. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

521 §131. **Definitions.** §58. (1) In this act, unless the context or subject matter otherwise requires, "Action" includes counterclaim, set-off, and suit in equity. "Delivery" means voluntary transfer of possession from one person to another. "Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit. "Goods" means chattels or merchandise in storage, or which has been or is about to be stored. "Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein. "Order" means an order by endorsement on the receipt. "Owner" does not include mortgagee or pledgee. "Person" includes a corporation or partnership or two or more persons having a joint or common interest. To "purchase" includes to take as mortgagee or pledgee. "Purchaser" includes mortgagee and pledgee. "Receipt" means a warehouse receipt. "Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor. "Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

521 §133. **Existing Receipts.** §59. The provisions of this act do not apply to receipts made and delivered prior to the taking effect of this act.

521 §135. **Repeal.** §60. All acts or parts of acts inconsistent with this act are hereby repealed.

521 §137. **Name of Act.** §61. This act may be cited as the "Uniform Warehouse Receipts Act."

TITLE 525—WATER DISTRICTS.

AN ACT authorizing the establishment of water districts, providing for the acquirement, construction, maintenance, operation, development and regulation of a water supply for all uses and purposes, public and private other than irrigation, with full power to regulate and control the use, distribution and price thereof, and providing the method of payment therefor. Approved March 22, 1913; Laws '13, ch. 161.

525 §1. **Water Districts Authorized.** §1. Water districts for the acquire-

ment, construction, maintenance, operation, development and regulation of a water supply system within such districts are hereby authorized to be established in the various counties of this state, as in this act provided.

525 §3. **Formation of District.** §2. At any general election or any special election which may be called for that purpose the board of county commissioners of any county in this state shall on petition of at least twenty-five per cent. of the qualified electors residing within the district described in said petition, submit to the voters residing within said district, the proposition of creating a water district which shall be co-extensive with the territory described in the petition and the board of county commissioners shall submit such proposition at a special election to be called therefor when such petition so requests.

525 §5. **Petition.** §3. The petition presented to the board of county commissioners shall set forth the territorial extent of the proposed district, particularly describing the same and shall be filed with the county auditor who shall within fifteen days examine the signatures thereto and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of officers of any incorporated city or town in such proposed water district. If such petition be found to be insufficient it shall be returned to the person or persons filing the same who may amend or add names thereto for ten days when the same shall be returned to the county auditor who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the board of county commissioners who shall, at their first meeting thereafter if such petition so requests, by resolution, call a special election to be held not less than thirty nor more than sixty days from the date of such certificate and shall cause to be published a notice of such election at least once a week for four consecutive weeks in a newspaper of general circulation in the county in which said proposed water district is located, which notice shall state the hours during which such polls will be open, the boundaries of the proposed water district and the object of such election, and said notice shall also be posted for ten days in ten public places in such proposed water district. The same notice shall be given in the event of such proposition being submitted at a general election: Provided, In submitting the said question to the voters for their approval or rejection, the proposition shall be expressed on said ballot in the following terms: ".....Water Supply District. Yes" (Giving the name to such district as may be decided on by the board of county commissioners). ".....Water Supply District. No." (Giving the name to such district as may be decided on by the board of county commissioners). There shall be not less than one polling place in each of the various wards of any incorporated city or town in the proposed water districts, and one polling place in each precinct in such proposed water district.

525 §7. **Two or More Petitions.** §4. Whenever two or more petitions for the formation of a water district shall be filed as herein provided the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits, in whole or in part of any water district.

525 §9. **Elections.** §5. If at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district the board of county commissioners shall so declare in its canvass of the returns of such elections and such water district shall then be and become a municipal corporation of the State of Washington, and the name of such water district shall be ".....Water District" (inserting the name appearing on the ballot).

525 §11. **Commissioners—Election of.** §6. At the same election, at which the proposition is submitted to the voters as to whether a water district shall be formed, three water commissioners shall be elected to hold office respect-

ively for the terms, one, two, and three years and until their respective successors are elected, the term of each nominee for water commissioner to be expressed on the ballot. And thereafter and at least thirty days prior to the first Tuesday of June in each year such board of water commissioners shall give notice by publication at least once a week for four consecutive weeks in a newspaper of general circulation in said water district that an election will be held on the first Tuesday in June thereafter for a water commissioner to hold office for three years and until his successor is elected and qualified.

Nominations for water commissioners shall be by petition of at least ten per cent of the qualified electors of such water district to be filed in the office of the county auditor of the county in which such district is located for the first election and with the secretary of such water district for all succeeding elections, such nominations to be so filed at least ten days prior to such election: Provided, however, That there shall be no election held on the first Tuesday of June immediately following the creation of such water district: And provided, further, That in the event of a vacancy caused by death, resignation or otherwise, such vacancy shall be filled by appointment by a majority vote of the remaining board of water commissioners until the next regular election for water commissioner. Said board of water commissioners shall designate in their notice of election whether such election be a general or special election, the time of opening and closing of polls, and the place of voting, but in no event shall there be less than one voting place in each of the wards of any city or town in such district, and at least one voting place in any precinct in the water district outside of any town or city. The polls shall be open at every election held by said water district at least from one o'clock p. m. to eight p. m., but said board of water commissioners may keep the polls open for a longer period of time if they shall so order, but the time of opening and closing the polls must be stated in the notice of election and the polls shall be opened and closed in accordance with such notice. Any person residing in said water district who is at the time of holding of any election, a qualified voter under the laws of the State of Washington, shall be entitled to vote at any election held in such water district.

The officers of any city or town, or in any precinct in a water district where registration is required, having charge of the registration, shall deliver the same to the water commissioners for the use of the election officers at any election held in a water district formed under and in accordance with the provisions, of this act. And the registration of voters for election to be held in such water district shall be conducted by the city or town clerks and officer of registration of the city, town and territory embraced within said water district; and the notice prescribed to be given by (167 §179) section 4765 of Remington and Ballinger's Annotated Codes and Statutes of Washington, shall constitute sufficient notice to citizens residing in within said water district for registration for any general or special election therein, without the necessity for such notice specially stating that it is for registration for an election to be held in a water district. And any who shall have registered in accordance with the laws of this state, entitling him to vote at a general or special election in the city, town or territory comprised within such water district, within time to constitute same a good registration for any general or special election of said water district, shall be entitled to vote thereat without further or other registration. The clerk of such water district shall give notice of the closing of the poll-books for registration for any general or special election of such water district by a notice published at least ten days preceding such closing, such published notice to have at least two insertions in a newspaper of general circulation in such water district. And such poll-books shall be closed for the purpose of registration of voters for any general or special water district election five days preceding such election and such published notice shall so declare: Provided, however, That such poll-books shall not thereby be deemed closed for a general, county or city municipal elections, but closed only for general or special water district elections. The city or town clerk or registration officer required to perform the duties enumerated under this act shall receive no additional compensation therefor. The general laws of the State of Washington governing

the registration of voters for a general or a special city or town municipal elections, when not inconsistent with the foregoing provision, shall govern the registration of voters for elections held under this chapter, and the registration books of the city, town and territory comprising said water district shall be the books used by said water district, and no separate registration books shall be kept or maintained by it. The manner of holding any general or special election for said water district shall be in accordance with the laws of this state and the charter provisions of the cities or towns within said water district if any there be, in so far as the same are not inconsistent with the provisions of this act. All expense of elections for the formation of such water districts shall be paid by the county in which said election is held and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be re-paid to such county by the water district if formed.

525 §13. **Board of Commissioners—Officers.** §7. When the said water district shall be created as hereinbefore provided for, the officers of such district shall be a board of water commissioners consisting of three members elected as provided in section 6 of this act and said board of water commissioners shall annually elect one of their number as president and another of their number as secretary of said board. All water commissioners shall serve without compensation. They shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book or books kept for such purpose which shall be public records.

525 §15. **Board of Commissioners—Powers and Duties.** §8. All water districts organized under the provisions of this act shall be and are hereby authorized to acquire by purchase or condemnation, or both, all lands, property, property rights, water, water rights, leases or easements necessary for the purposes of the water district and to exercise the right of eminent domain in the acquirement or damaging of all land, property, property rights, water or water rights, leases and easements necessary in carrying out the purposes for which said district shall have been created and such right of eminent domain shall be exercised in the same manner and by the same procedure as is or may be provided by law for cities of the third class, except in so far as such law may be inconsistent with the provisions of this act, and except that all assessment or re-assessment rolls provided by law to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the water district, and the duties devolving upon the city treasurer under said law be, and the same are hereby imposed upon the county treasurer for the purposes of this act; to construct, condemn and purchase, purchase, acquire, add to, maintain and supply water works for the purpose of furnishing such water district and inhabitants thereof, and any city or town within such district, and any other persons with an ample supply of water for all uses and purposes public and private, except irrigation, with full authority to regulate and control the use, distribution and price thereof. And for the purposes aforesaid, it shall be lawful for any water district so organized in this state to take, condemn and purchase, purchase, acquire and retain water from any public or navigable lake, river or water course, percolating or subterranean or any underflowing water within the state and, by means of aqueducts or pipe line conduct the same throughout such water district, and throughout any city or town within such district and to construct and lay the same along and upon public highways, roads and streets, within such district, and to condemn and purchase, purchase or acquire, lands and rights of way necessary for said aqueducts, and pipe lines, and such water district is hereby authorized and empowered to erect and build dams or other works across or at the outlet of any lake, river or other water course therein up to and above high water mark; and for all the purpose of constructing or laying such aqueducts or pipe lines, dams or water works or other necessary structures in storing and retaining water as above provided, or for any of the purposes provided for by this chapter, such water districts shall have the right to occupy the beds and shores up to the high water mark of any such lake, river, or other water course, and to acquire the right by purchase or by

condemnation and purchase or otherwise to any water, water rights, easements or privileges, named in this chapter or necessary for any of said purpose and any such water district, shall have the right to acquire by purchase or by condemnation and purchase any lands, properties or privileges necessary to be had to protect the water supply of such water district from pollution: Provided, That should private property be necessary for any such purposes or for storing water above high water mark, such water district may condemn and purchase or purchase and acquire such private property.

525 §17. Local Improvement Districts. §9. Said water district shall have the power to establish local improvement districts within its territory; to levy special assessments under the mode of annual installments extending over a period not exceeding twenty years on all property specially benefited by any local improvement on the basis of special benefits to pay in whole or in part the damages or costs of any improvements ordered in such water district; to issue local improvement bonds in any such improvement district to be repaid by the collection of local improvement assessments: Provided, That the levying and collection of all public assessments and issuance of bonds hereby authorized shall be in the manner now (77 §689) and hereafter provided by law for the levying and collection of local improvement assessments and the issuance of local improvement bonds by cities of the third class in so far as the same shall not be inconsistent with the provisions of this act: Provided, however, That the duties devolving upon the city treasurer under said laws be and the same hereby are imposed upon the county treasurer for the purposes of this act, the mode of assessment shall be in the manner to be determined by the tax commissioner by resolution.

525 §19. Plan—Election—Debt. §10. It shall be the duty of the water district commissioners of every water district before creating any improvements hereunder or submitting to vote any plan for incurring any indebtedness, to consider and determine upon and adopt a comprehensive scheme or plan of water supply for such district for the purposes authorized in this act, and for such purpose, the water district commissioners shall investigate the several portions and sections of such water district for the purpose of determining the present and future needs of such district in regard to a water supply; to examine and investigate, determine and select a water supply or water supplies for such district suitable and adequate for present and future needs thereof; to consider and determine a general system or plan for acquiring such water supply or water supplies, and the lands, waters and water rights and easements necessary therefor, and for retaining and storing any such waters, erecting dams, reservoirs, aqueducts and pipe lines to convey the same throughout such district; for determining the plan or system for distributing such water throughout such district by means of subsidiary aqueducts and pipe lines, and the method of distributing the cost and expense thereof against such water district and against local improvement districts within such water district for any purpose authorized in this act, and including any such local improvement district lying wholly or partially within the limits of any city or town in such district.

Such general comprehensive scheme and plan, when finally considered or determined upon by such board of water commissioners, shall be by them adopted by resolution, which resolution shall provide for the submission thereof at a general or special election specified in such resolution to the qualified voters within such district for their ratification or rejection. No expenditure for the carrying on of any part of such plan shall be made by the water district commissioners other than the necessary salaries of engineers, clerical and office expenses of such water district, and the cost of engineering, surveying, preparation and collection of data necessary for the making and adoption of a general scheme of improvements in such water district unless and until such general scheme of improvements has been so officially adopted by the water district commissioners and ratified by the affirmative vote of a majority of the voters of such water district voting thereon at the election which shall be held for such purpose. Twenty days notice of such election shall be published in one or more weekly newspapers of general circulation in such water district. If at such election a majority of the votes cast upon

such question shall be in favor of the adoption thereof, the same shall thereupon be ratified and adopted and proclamation thereof made by such commission within ten days after such election. Such commission may submit at the same election at which the proposition to adopt the comprehensive plan or scheme is submitted, or at any general or special election a proposition that said water district incur a general indebtedness for the construction of any part or all of said comprehensive plan.

Provided, however, that such proposition to incur indebtedness shall be so submitted as to enable the voters to vote for or against the same independent of any vote on the proposition of adopting or rejecting such comprehensive plan or scheme. If such general indebtedness is to be incurred, the amount of such indebtedness and the terms thereof shall be included in the proposition submitted to the qualified voters as aforesaid and such proposition shall be adopted and assented to by three-fifths of the qualified voters of the said water district voting at said election.

Whenever a proposition has been adopted as aforesaid, the water district commissioners shall have power to proceed forthwith to carry out said general scheme or plan to the extent specified in the proposition to incur such general indebtedness.

525 §21. **Issuance of Bonds.** §11. Whenever the qualified voters of any such water district shall have heretofore adopted or shall hereafter adopt a proposition for a water supply, as set out in the preceding section, and shall have authorized a general indebtedness for all of said proposition or any part thereof, general water district bonds may be issued as hereinafter provided. Said bonds shall be registered or coupon bonds; shall be issued in denominations of not less than one hundred or more [than] one thousand dollars; shall be numbered from one up consecutively; shall bear the date of their issue; shall be payable not more than forty years from date; and shall bear interest not to exceed six per cent per annum, payable semi-annually, with interest coupons attached; and the principal and interest shall be made payable at such place as may be designated. The bonds and each coupon shall be signed by the presiding officer of the board of water district commissioners and shall be attested by the secretary of the said board under the seal of the water district. There shall be levied each year a tax upon the taxable property within such water district, sufficient to pay the interest on said bonds as the same accrues: Provided, however, That no levy shall be made for such purposes, if the revenues from the sale of water or power is sufficient to pay said interest; before ten years prior to the maturity of said bonds an annual sinking fund sufficient for the payment of said bonds at maturity may be established by the levy of a tax; all taxes shall become due and collectable as other taxes. Said bonds shall be printed and engraved or lithographed on good bond paper and a duly authenticated copy of this act, and a copy of the resolution of the water district commission directing the submission of such plan or system to the qualified voters of such water district for ratification or rejection shall be printed on each bond, together with a printed copy of a signed statement by the presiding officer of the board of water commissioners and the secretary of such board, showing the result of said election. Such bonds shall be sold in such manner as the corporate authorities shall deem for the best interest of the water district. A register shall be kept of all bonds, which register shall show the number, date, amount, interest, to whom delivered—if coupon bonds—and the name of the payee—if registered bonds; and when and where payable and each and every bond executed, issued or sold under the provisions of this subdivision.

525 §23. **Improvements by Local Assessment.** §12. Whenever a petition signed by a majority of the owners of land in the district to be therein described shall be filed with the water district commission, asking that any portion of the general plan adopted be ordered, and defining the boundaries of a local improvement district to be created to pay in whole or in part to pay the cost thereof, it shall be the duty of the water district commission to fix a date for hearing on such petition, after which it may alter the boundaries of such proposed district and prepare and adopt detailed plans of any such local improvement, declare the estimated cost thereof, what proportion of

such cost shall be borne by such proposed local improvement district and what proportion of the cost, if any, shall be borne by the entire water district: Provided, however. That engineering and office expenses in all cases shall be borne by the general water district.

The water district commission shall forthwith by resolution order such improvement, provide the general funds of the water district to be applied thereto, acquire all necessary lands therefor, pay all damages caused thereby and commence in the name of the water district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle said water district to proceed with such work, and said water district commission shall thereafter proceed with such work and shall make and file with the county treasurer, its roll levying special assessments in the amount to be paid by special assessment against the property situated within such local improvement district in proportion to the special benefits to be derived by the property in such local improvement district from such improvement. Before the approval of such roll a notice shall be published once a week for four consecutive weeks in a newspaper of general circulation in such local improvement district, stating that such roll is on file and open to inspection in the office of the clerk of the water district commission, and fixing the time not less than fifteen nor more than thirty days from the date of the first publication of such notice within which protests must be filed with the secretary of said water district commission against any assessments shown thereon and fixing a time when a hearing shall be held by said commission on said protests. After such hearing the water district commission may alter any and all assessments shown on such roll and may then by resolution approve the same, but in the event of any assessment being raised a new notice similar to such first notice shall be given, after which final approval of such roll may be made by the water district commission: Provided, That whenever any property shall have been entered originally upon such roll and the assessment upon any such property shall not be raised, no objection thereto shall be considered by the water district commission or by any court on appeal unless such objection be made in writing at or prior to the date fixed for the original hearing upon such roll.

525 §25. **Appeal.** §13. The decision of the water district commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said water district commission and with the clerk of the superior court in the county in which such water district is situated within ten days after the resolution confirming such assessment roll shall have become published, and such notice shall describe the property and set forth the objections of such appellant to such assessment; and, within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court a transcript consisting of the assessment roll and his objections thereto, together with the resolution confirming such assessment roll, and the record of the water district commission with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such secretary of said water district commission and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the water district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three (3) days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the head of the legal de-

partment of such water district, and to the city clerk, that such transcript is filed. Said notice shall state a time (not less than three (3) days from the service thereof) when the appellant will call up the said cause for hearing; and the superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury; and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such water district and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, and he shall modify and correct such assessment roll in accordance with such decision. An appeal shall lie to the supreme court from the judgment of the superior court as in other cases: Provided, however, That such appeal must be taken within fifteen (15) days after the date of the entry of the judgment of such superior court; and the record and opening brief of the appellant in said cause shall be filed in the supreme court within sixty (60) days after the appeal shall have been taken by notice as provided in this act. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. And the supreme court, on such appeal may correct, change, modify, confirm or annul the assessment in so far as the same affects the property of the appellant. A certified copy of the order of the supreme court upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision.

525 §27. **Proceedings Conclusive.** §14. Whenever any assessment roll for local improvements shall have been confirmed by the water district commission of such water district as herein provided, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the water district commission upon such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this act, and not appealing from the action of the water district commission in confirming such assessment roll in the manner and within the time in this act provided. No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor; Provided, That this section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds (1) that the property about to be sold does not appear upon the assessment roll, or (2) that said assessment had been paid.

525 §29. **Annexation of Territory.** §15. The territory adjoining and in the same county with any water district organized under this chapter may be annexed to and become a part of such water district, in the manner following: Any twenty-five (25) legal voters, residents within the territory proposed to be annexed, may petition the said water district commission of such water district to cause the question to be submitted to the legal voters of the territory proposed to be annexed whether they will be annexed and become a part of such adjoining water district: Provided, however, That where such territory to be annexed shall be within the limits of an incorporated city or town other than the first class, such petition shall be signed by at least twenty (20) per cent of the qualified electors residing within such territory. The petition shall define the limits of the territory proposed to be annexed to such water district. Upon the filing of such petition with the board of water commissioners, if said commissioners shall concur in said petition, they shall provide for a hearing to be held for the discussion of such proposed annexation at the office of said board of water commissioners, and shall give due notice of such hearing by publication in a weekly newspaper

published in said water district for at least two weeks prior to said hearing. If said water commissioners shall concur in said petition, it shall be their duty to submit the proposal to the electors of such territory proposed to be annexed, at an election to be held in such territory. The said commissioners shall, by order of such board duly adopted, fix a time and place or places within the limits of the territory proposed to be annexed for the holding of such election to determine the question of annexation, and said commissioners shall name the persons to act as judges at such election, and shall give notice thereof by causing notice to be published for two weeks in two consecutive issues of a weekly newspaper published in said water district, and by posting notices in five (5) public places within the territory proposed to be annexed to said district. The ballot to be used at such election shall be in the following form:

“For annexation to water district.”

“Against annexation to water district.”

The judge or judges at such election shall make return thereof to the board of water commissioners, who shall canvass such return and cause a statement of the result of such election to be entered on the record of such commissioners. If the majority of the votes cast upon the question at such election shall be for annexation, then such territory shall immediately be and become annexed to such water district, and the same shall thenceforth be a part of said water district, the same as though originally included in such district.

525 §31. Election of Officers. §16. All election officers for any election held pursuant to this chapter shall be named by the board of water commissioners and the expense of all such elections shall be paid out of the funds of such water district.

525 §33. Tax Levy—Collection. §17. The board of water commissioners are hereby authorized to levy, or cause to be levied, to carry out the purposes of this act in addition to that mentioned in section 11 of this act, a general tax on all property located in said water district each year not to exceed two mills on the assessed valuation of the property in such water district. Said taxes when so levied shall be certified to the proper county official for the collection of the same as other general taxes. When such money is collected it shall be placed in a separate fund to be known as the..... Water District Fund and paid out on warrants issued on the board of water commissioners for the purposes specified in this act.

525 §35. Limit of Indebtedness. §18. Each and every water district that may hereafter be organized pursuant to this act is hereby authorized and empowered, by and through its board of water commissioners, to contract indebtedness for water purposes, and the maintenance thereof not exceeding one per cent of the taxable property in such water district to be ascertained by the last assessment for state and county purposes previous to and the incurring of such indebtedness.

525 §37. Additional Indebtedness. §19. Each and every water district hereafter to be organized pursuant to this act, may contract indebtedness in excess of the amount named in the preceding section, but not exceeding in amount, together with existing indebtedness, five (5) per centum of the taxable property in said district, to be ascertained as provided in the preceding section, whenever three-fifths ($\frac{3}{5}$) of the voters voting at said election in such water district assent thereto, at an election to be held in said water district in the manner provided by this act, which election may either be a special or a general election, and the board of water commissioners are hereby authorized and empowered to submit the question of incurring such indebtedness, and issuing negotiable bonds of such water district to the qualified voters of such water district at any time they may so order: Provided, That all bonds so to be issued shall be subject to the provisions regarding bonds as set out in section eleven (11) of this act.

525 §39. Contracts. §20. The board of water commissioners shall have authority to create and fill such positions and fix salaries and bonds thereof as it may by resolution provide. All materials purchased and work ordered, the estimated cost of which is in excess of one thousand dollars shall be let by

contract; before awarding any such contract the board of water commissioners shall cause to be published in some newspaper published within the district a notice for at least ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of water commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of water commissioners on or before the day and hour named therein. Each bid shall be accompanied by a certified check payable to the order of the board of water commissioners for a sum not less than five per cent of the amount of the bid and no bid shall be considered unless accompanied by such check. At the time and place named such bids shall be publicly opened and read and the board of water commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting his own plans and specifications: Provided, however, That no contract shall be in excess of the cost of said materials or work, or if in the opinion of the board of water commissioners all bids are unsatisfactory they may reject all of them and re-advertise and in such case all checks shall be returned to the bidders; but if such contract be let, then and in such case all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of water commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check and the amount thereof shall be forfeited to the water district.

525 §41. **Interest Coupon, Payment of.** §21. The coupons hereinbefore mentioned for the payment of interest on said bonds shall be considered in all purposes as warrants drawn upon the general fund of the said water district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such water district at maturity, or thereafter, and when so presented, if there are not funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to endorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as the bond to which it was attached.

525 §43. **Funds.** §22. The county treasurer shall create a fund to be known as the "..... Water District Fund," into which shall be paid all money received by him from the collection of taxes in behalf of such water district, and no money shall be disbursed therefrom except upon warrants of the county auditor as in this act provided. The county treasurer shall also maintain such other special funds as may be prescribed by the water district, into which shall be placed such moneys as the board of water commissioners may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by authority of the board of water commissioners.

525 §45. **Act Concurrent.** §23. This act shall not be construed to repeal, amend or modify any law heretofore enacted providing a method for water supply for any city or town in this state, but shall be held to be an additional and concurrent method providing for such purpose.

TITLE 529—WEIGHTS AND MEASURES.

AN ACT relating to weights and measures, establishing standards therefor; providing for the enforcement thereof; prescribing penalties for the violation of this act, and repealing (529 §§1-25) sections 9511 to 9523, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington. Approved March 11, 1913. Laws '13, Ch. 52.

529 §1. **Weights and Measures, U. S. Standards.** §1. The weights and meas-

ures, received from the United States under a resolution of Congress approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or renewal thereof, and such as shall be supplied by the state in conformity therewith and certified by the National Bureau of Standards (Pierce's Fed. Code, §1827), shall be the state standards, by which all county and municipal standards of weights and measures shall be tried, approved and sealed.

All weights, measures, scales, scale beams, patent balances, steelyards, automatic or computing scales, or other instruments for weighing or measuring, by which any merchandise, commodity, or thing is bought or sold by weight or measure, or offered or exposed for sale, shall conform to the state standards herein prescribed.

Any weight, measure, scale, scale beam, patent balance, steelyard, automatic or computing scale or other instrument or device for weighing or measuring which does not conform to such state standards is hereby declared to be a false weight or measure.

529 §3. **State Department—Deputy Superintendent—Duties—Bond.** §2 There is hereby created a department of weights and measures in and for the State of Washington. The secretary of state shall be ex-officio superintendent of weights and measures and the head of the department herein created. He shall appoint a deputy superintendent of weights and measures and one inspector whose terms of office shall expire with that of the superintendent. The deputy shall receive a salary of twenty-four hundred dollars per annum, and the inspector shall receive a salary of fifteen hundred dollars per annum. There shall be allowed for maintenance of the department of weights and measures such sums as shall be appropriated by the legislature.

The superintendent shall take charge of the state standards, cause them to be kept in a safe and suitable place in the office of the superintendent, from which they shall not be removed except for repairs or for certification, and he shall take all other necessary precautions for their safe keeping. He shall maintain the state standards in good order and shall submit them at least once in ten years to the National Bureau of Standards for certification. He shall at least once in five years try and prove by the state standards all weights, measures and other apparatus which may belong to any county or city, and shall seal such when found to be accurate, by stamping on them with seals which he shall have and keep for that purpose, the letter "W" and the last two figures of the year in which the same are sealed. He shall have and keep a general supervision of the weights, measures and weighing and measuring devices offered for sale, sold or in use in the state. He shall, upon the written request of any citizen, firm, corporation or educational institution in the state, test or calibrate weights, measures, weighing or measuring devices and instruments or apparatus used as standards in this state. He, or his deputy, or his inspectors, by his direction, shall, at least once annually, test all scales, weights and measures used in checking the receipts or disbursements of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, and he shall report in writing his findings to the supervising board and to the executive officer of the institution concerned, and at the request of such board or executive officer, the superintendent of weights and measures shall appoint in writing one or more employes, then in the actual service of each institution, who shall act as special deputies for the purpose of checking the receipts or disbursements of supplies. He shall keep a complete record of the standards, balances and other apparatus belonging to the state and take receipt for same from his successor in office. He shall annually, on the first day of October make to the governor a report of the work done by his office. The state superintendent, or his deputy, or inspectors, at his direction, shall inspect all standards and apparatus used by the counties and cities at least once in two years, and shall keep a record of the same. He or his deputy or inspectors, at his direction, shall at least once in two years visit the various cities and counties in the state, in order to inspect the work of the local sealers, and in the performance of such duties he may inspect the weights, measures, balances or any other weighing or measuring appliances of any citizen, firm or corporation, and shall have the same powers as the local sealer of weights and

measures. The superintendent shall issue from time to time, regulations for the guidance of county and city sealers, and the said regulations shall govern the procedure to be followed by the aforesaid officers in the discharge of their duties. The state superintendent of weights and measures shall forthwith, on his appointment, give a bond in the penal sum of \$5,000.00 with sureties to be approved by the governor for the faithful performance of the duties of his office, and for the safety of the standards entrusted to his care, and for the surrender thereof immediately to his successor in office or to the person appointed by the governor to receive them.

529 §5. County and City Sealers. §3. The board of county commissioners of each county and the common council of each city required to appoint a sealer under this act, shall procure at the expense of the county or city, and shall keep at all times a complete set of weights and measures and other apparatus of such materials and construction as the said superintendent of weights and measures may direct. All such weights, measures and other apparatus having been tried and accurately proven by him, shall be sealed and certified to by the state superintendent as hereinbefore provided; and shall be then deposited with and preserved by the county or city sealer as public standards for such county or city.

Whenever the board of county commissioners of a county or the common council of such city shall neglect for six months so to do, the county auditor of the county, or the city clerk or comptroller of said city, on notification and request by the superintendent of weights and measures, shall provide such standards and cause the same to be tried, proved, sealed and deposited at the expense of the county or city.

529 §7. County Auditor Is Sealer—Powers. §4. The county auditor of each county shall be ex-officio sealer of weights and measures in such county and shall, for the purpose of carrying out the provisions of this act, appoint a deputy sealer of weights and measures who shall possess the same powers and perform the same duties as to the county auditor in respect to this act. Such deputy shall be paid a reasonable salary, and no fee shall be charged by the inspector or by the county for the inspection or testing of weights, measures, or weighing or measuring device. Where not otherwise provided by law, the county sealer shall have the power, within his county, to inspect, test, try and ascertain if they are correct all weights, scales, beams, measures of every kind, instruments or mechanical device for measurements and tools, appliances or accessories connected with any or all such instruments or measures kept for the purpose of sale, sold or used or employed within the county by any proprietor, agent, lessee or employee in proving the size, quantity or extent, area or measurement of quantities, things, produce, articles for distribution or consumption offered or submitted by such person or persons for sale, for hire or award; and he shall have the power to and shall from time to time weigh or measures packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold, or in the process of delivery, in order to determine whether the same contains the amount represented, and whether they are being offered for sale or sold in a manner in accordance with law. He shall at least twice in each year, and as much oftener as he may deem necessary, see that the weights, measures and all apparatus used in the county are correct. He may for the purpose above mentioned, and in the general performance of his official duties, enter and go into or upon, and without formal warrant, any stand, place, building or premises, or stop any vendor, peddler, junk dealer, coal wagon, wood wagon, ice wagon, delivery wagon or any dealer whatsoever, and require him, if necessary to proceed to some place which the sealer may specify, for the purpose of making the proper tests. Whenever the county sealer finds a violation of the statutes relating to weights and measures, he shall cause the violator to be prosecuted. Whenever the sealer compares weights, measures or weighing or measuring instruments, and finds that they correspond or causes them to correspond with the standards in his possession, he shall seal or mark such weights, measures or weighing or measuring instruments with appropriate devices to be approved by the state superintendent of weights and measures. He shall condemn and seize and may destroy incor-

rect weights, measures or weighing or measuring instruments which cannot be repaired; and such as are incorrect and yet may be repaired he shall mark or tag as "Condemned for repairs"—in a manner prescribed by the state superintendent of weights and measures. The owner or users of any weights, measures or weighing or measuring instruments of which such disposition is made, shall have the same repaired or corrected within ten days and they may neither use nor dispose of the same in any way, but shall hold the same at the disposal of the sealer. The county sealer shall keep a complete record of the work done by him, and shall make an annual report to the board of county commissioners and an annual report duly sworn to not later than the first of October to the state superintendent of weights and measures on blanks to be furnished by the superintendent. The deputy county sealer of weights and measures shall forthwith, on his appointment give a bond in the penal sum of one thousand dollars (\$1,000.00) with sureties to be approved by the appointive power for the faithful performance of the duties of his office, and for the safety of the local standards, and such appliances for verification as are committed to his charge and for the surrender thereof immediately to his successor in office, or to the person appointed by the proper authority to receive them. Provided, however, That nothing in the above shall be construed to prevent two or more counties from combining the whole or any part of their districts as may be agreed upon by the auditors thereof with one set of standards and one sealer, upon the written consent of the state superintendent of weights and measures.

529 §9. Sealer City of First Class. §5. There shall be a city sealer of weights and measures in cities of the first class to be appointed by the mayor from a list to be furnished by the civil service board, and under the rules of said board, where such board exists, otherwise he shall be appointed by the mayor by and with the advice and consent of the common council or city commission. He shall perform in said city the duties and have like powers as a county sealer in a county. In those cities in which no sealer is required by the above, the county sealer of the county shall perform in said cities the duties and have like powers as in the county. Provided, however, That nothing in the above shall be construed to prevent any county and a city situated therein from combining the whole or any part of their districts, as may be agreed upon, with one sealer, subject to the written approval of the state superintendent of weights and measures. Provided, however, That in every case where any city of the first class has heretofore made, or may hereafter make provision by charter or ordinance for the enforcement of proper legal weights and measures vesting general supervision and direction in any official at the head of any department of such city, such official for the purpose of this act, shall be the ex-officio sealer of weights and measures in such city, and he and his subordinate or subordinates, shall have the duties and powers of city sealers of weights and measures, and the powers of such cities relative to weights and measures shall be additional to the powers granted such city by law or charter: And provided further, That the county sealer shall exercise no powers and discharge no duties in any city of the first class having its own sealer of weights and measures.

529 §11. False Weights—Penalties. §6. Any person, who, by himself or his servant or agent or as the servant or agent of another, shall use or retain in his possession a false weight or measure or weighing or measuring device, or any weight or measure or weighing or measuring device which has not been sealed by a sealer of weights and measures within one year, in the buying or selling of any commodity, or thing; or who shall dispose of any condemned weight, measure or weighing or measuring device contrary to law, or remove any tag placed thereon by the sealer; or any person who, by himself or by his servant or agent, or as the servant or agent of another, shall sell or offer or expose for sale less than the quantity he represents; or sell or offer or expose for sale any such commodities in a manner contrary to law; or any person who by himself or by his servant or agent or as the servant or agent of another shall sell or offer for sale, or have in his possession for the purpose of selling any device or instrument to be used to or calculated to falsify any weight or measure, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty (20) dollars nor more than two hundred

(200) dollars, or by imprisonment in the county jail not more than three months, or both such fine and imprisonment upon a first conviction, but upon a second conviction he shall be punished by a fine of not less than fifty (50) dollars, nor more than five hundred (500) dollars, or by imprisonment in the county jail not more than six months, or both such fine and imprisonment.

529 §13. **Arrests, etc., by Sealers.** §7. The superintendent of weights and measures, his deputy and inspectors, and the county and city sealer of weights and measures, are hereby made special policemen, and are authorized and empowered to arrest, without formal warrant, any violator of the statutes in relation to weights and measures, and to seize, for use as evidence, and without formal warrant, any false weight, measure or weighing or measuring device or packages or amounts of commodities found to be used, retained or offered or exposed for sale, or sold in violation of law.

529 §15. **Hindering Sealers—Penalty.** §8. Any person who shall hinder or obstruct, in any way, the superintendent of weights and measures, his deputy or inspectors, or any county or city sealer, in the performance of his official duties, shall be guilty of a misdemeanor, and shall be punished upon conviction thereof, in any court of competent jurisdiction, by a fine of not less than twenty (20) nor more than two hundred (\$200) dollars or by imprisonment in the county jail for not more than 90 days or by both such fine and imprisonment.

529 §17. **Standard Packages, etc.** §9. A standard package or container of butter in the State of Washington shall contain sixteen (16) ounces net weight or thirty-two (32) ounces net weight, and a standard package or container need have no statement of the net weight of its contents.

Butter. Whenever butter is sold or offered for sale in a package or container the net weight of which is more or less than the standards herein described, such package or container shall be labeled in plain English words or figures with the correct net weight of its contents expressed in pounds and ounces together with the name of the manufacturer or jobber.

Bread. A standard loaf of bread in the State of Washington shall contain sixteen (16) ounces net weight or thirty-two (32) ounces net weight, and no bread shall be sold within the state except it be a whole, half or quarter loaf, containing thirty-two (32) ounces, sixteen (16) ounces, or eight (8) ounces net weight, unless the same be labeled in plain English words or figures with its correct net weight expressed in pounds and ounces together with the name and address of the manufacturer. This section shall not apply to rolls or to fancy bread weighing less than four (4) ounces nor to stale bread sold in quantity.

Potatoes. A standard sack of potatoes in the State of Washington shall contain one hundred (100) pounds net weight, and a standard sack of potatoes need have no statement of the weight of its contents. Whenever potatoes are sold by the sack, in sacks containing more or less than the standard, such sack shall be labeled in plain English words or figures with its true net weight.

Berries, Etc. All sales of blackberries, currants, strawberries, raspberries, cranberries, blueberries, gooseberries, cherries and similar berries in packages containing less than one bushel, shall be sold by the dry quart containing 67.2 cubic inches or the dry pint containing 33.6 cubic inches, and all berry boxes sold, used or offered for sale within the state shall be of the interior capacity of 67.2 or 33.6 cubic inches, unless the same be labeled in plain English words or figures with its correct interior capacity expressed thereon in cubic inches. Nothing in the above section shall be so construed as to prevent the sale of any of the articles therein mentioned by weight.

Coal. A standard sack of coal in the State of Washington shall contain one hundred (100) pounds net weight and a standard sack of coal need have no statement of the net weight of its contents. Whenever coal is sold or offered for sale by the sack, in sacks containing more or less than one hundred (100) pounds net weight, such sack shall be labeled in plain English words or figures with the true net weight of its contents expressed in pounds. It shall be unlawful for any person, firm or corporation or their agents, servants or other employees to misrepresent any coal offered for sale

or to sell coal of any particular name or designation, or from any particular mine under the name or designation of another coal or mine.

Milk. All milk, cream or buttermilk sold in the State of Washington, in bottles shall be sold only in bottles containing one-half pint, one pint, one quart, one-half gallon or one gallon standard liquid measure.

Vinegar. All vinegar sold, exposed or offered for sale in the State of Washington, in bottles, shall be sold in bottles containing one-half pint, one pine, one quart, one-half gallon or one gallon standard liquid measure and when so sold need have no statement of the net measure of its contents. Whenever vinegar is sold in the State of Washington in bottles containing more or less than mentioned in the foregoing section, such bottles shall be labeled in plain English words and figures with its true net measure.

Net Weight. It shall be unlawful for any person, firm or corporation in the State of Washington to buy any commodity upon the basis of weight or measure except the same be bought upon the basis of the true net weight or measure, and unless the scales or measures so used shall bear the seal of a sealer of weights and measures and conform to the standards adopted by the State of Washington.

Ice. Every vendor of ice in the State of Washington shall at the time of actual delivery of any ice sold, weigh the quantity of ice delivered, and for that purpose shall use a steelyard balance or other apparatus for weighing such ice, which shall have been duly adjusted and sealed by a duly appointed sealer of weights and measures in accordance with the provisions of the laws of the State of Washington, and all ice delivered to consumers within this state shall be sold by avoirdupois weight unless it is otherwise specially agreed upon between the buyer and the seller. Each and every pair of ice tongs used in the delivery of ice within said state shall have prominently and conspicuously stamped thereon the exact and true avoirdupois weight of said tongs.

Official Weights. It shall be unlawful for any vendor, or his servant, agent or other employee in the State of Washington, to offer to sell, or sell, or sell and deliver any commodity ordinarily and usually sold in bulk or quantity by weight or measure, unless the same be weighed or measured as the case may be upon or by officially tested and approved weights, measures, scales, scale-beams, patent balances, steelyards, automatic or computing scales or other instruments for weighing or measuring, and unless that portion of such commodity so offered for sale or sold by weight or measure shall be the true net weight or measure.

Wood. It shall be unlawful for any vendor of firewood in the State of Washington, or his servant, agent or other employees to sell or offer for sale the same in the state in any quantity or by any measure except by the cord or fractional part thereof. The standard measurement of a cord of firewood in this state is hereby fixed and established at one hundred twenty-eight (128) cubic feet. It is hereby expressly provided that mill wood in twenty-four (24) inch lengths or shorter shall not be subject to the provisions of this act.

Penalty. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

529 §19. **Public Service Excepted.** §10. Nothing contained in this act shall be construed as withdrawing or superseding the powers and duties of the public service commission of Washington with respect to track scales and other weighing devices used by common carriers, but the standards herein established shall be used in testing the track scales and weighing devices of such carrier.

CROSS-REFERENCES REM. & BAL. CODE TO PIERCE'S CODE

1 127 \$93	87 131 \$7	168 81 \$81	241 81 \$171	311 81 \$189	381 81 \$669
2 127 \$99	88 131 \$9	169 81 \$83	242 81 \$211	312 81 \$201	382 81 \$671
3 127 \$89	89 283 \$1	170 81 \$85	243 81 \$173	313 81 \$203	383 81 \$673
4 127 \$77	90 283 \$3	171 81 \$87	244 81 \$175	314 81 \$205	384 81 \$675
5 127 \$95	91 283 \$5	172 81 \$89	245 81 \$177	315 81 \$207	385 81 \$677
6 127 \$101	92 283 \$7	173 81 \$91	246 81 \$179	316 81 \$641	386 81 \$679
7 127 \$109	93 283 \$9	174 81 \$93	247 81 \$181	317 81 \$643	387 81 \$681
8 127 \$69	94 283 \$15	175 81 \$95	248 81 \$183	318 81 \$553	388 81 \$683
9 127 \$71	97 283 \$10	176 81 \$97	249 81 \$185	319 81 \$209	389 81 \$685
10 127 \$71	98 283 \$16	177 81 \$99	250 81 \$187	320 81 \$213	390 81 \$687
11 127 \$73	99 283 \$25	178 81 \$101	251 81 \$189	321 81 \$215	391 81 \$689
12 127 \$75	100 283 \$10	179 81 \$7	252 81 \$191	322 81 \$555	392 81 \$691
13 127 \$79	106 283 \$29	180 81 \$9	253 81 \$193	323 81 \$557	393 81 \$693
14 127 \$97	107 283 \$11	181 81 \$11	254 135 \$1655	324 81 \$559	394 81 \$695
15 127 \$171	108 283 \$13	182 81 \$13	255 81 \$217	325 81 \$561	395 81 \$697
17 127 \$173	110 283 \$12	183 81 \$15	256 81 \$219	326 81 \$563	396 81 \$699
18 127 \$175	111 283 \$14	184 81 \$17	257 81 \$221	327 81 \$565	397 81 \$703
26 127 \$177	112 485 \$33	185 81 \$19	258 81 \$223	328 283 \$14	398 81 \$727
27 127 \$205	113 115 \$373	186 81 \$21	259 81 \$225	329 81 \$567	399 81 \$729
28 127 \$207	114 115 \$387	187 81 \$23	260 81 \$227	330 81 \$569	400 81 \$735
29 127 \$209	115 115 \$383	188 81 \$25	261 81 \$229	331 81 \$571	401 81 \$733
30 127 \$211	116 115 \$385	189 81 \$27	262 81 \$231	332 81 \$573	402 81 \$737
32 127 \$179	118 25 \$17	190 81 \$29	263 81 \$233	333 81 \$575	403 81 \$739
35 115 \$427	119 25 \$1	191 81 \$31	264 81 \$235	334 81 \$577	404 81 \$748
36 127 \$185	120 25 \$3	192 81 \$33	265 81 \$237	335 81 \$579	405 81 \$741
38 127 \$191	121 25 \$5	193 81 \$35	266 81 \$1261	336 81 \$581	406 81 \$745
39 127 \$183	126 25 \$13	194 81 \$37	267 81 \$1263	337 81 \$583	407 81 \$747
40 127 \$181	127 25 \$19	195 81 \$39	268 81 \$1265	338 81 \$585	408 81 \$749
41 127 \$201	128 25 \$20	196 81 \$41	269 81 \$1267	339 81 \$587	409 81 \$751
42 127 \$203	130 25 \$21	197 81 \$43	270 81 1269	340 81 \$589	410 81 \$753
43 287 \$95	131 25 \$23	198 81 \$45	271 81 \$1271	341 81 \$591	411 81 \$755
44 287 \$97	132 25 \$25	199 81 \$547	272 81 \$1275	342 81 \$593	412 81 \$757
45 287 \$99	133 25 \$27	200 81 \$549	273 81 \$237	343 81 \$595	413 81 \$759
46 287 \$37	134 25 \$29	201 81 \$551	274 81 \$239	344 81 \$597	414 81 \$761
47 287 \$85	135 25 \$31	202 81 \$47	275 81 \$241	345 81 \$599	415 81 \$763
48 287 \$91	136 25 \$33	203 81 \$49	276 81 \$245	346 283 \$27	416 81 \$765
49 287 \$93	137 25 \$35	204 81 \$103	277 81 \$243	347 81 \$601	417 81 \$767
50 127 \$1	138 25 \$37	205 81 \$105	278 81 \$247	348 81 \$603	418 81 \$769
51 127 \$3	139 25 \$39	206 81 \$107	279 81 \$249	349 81 \$605	419 81 \$771
52 127 \$7	140 25 \$41	207 81 \$109	280 81 \$251	350 81 \$607	420 81 \$705
53 127 \$9	141 25 \$43	208 81 \$109	281 81 \$253	351 81 \$609	421 81 \$707
54 127 \$11	142 25 \$45	209 81 \$111	282 81 \$255	352 81 \$611	422 81 \$709
55 127 \$13	143 81 \$1	210 81 \$117	283 81 \$1873	353 81 \$613	423 81 \$711
56 127 \$15	144 409 \$837	211 81 \$119	284 81 \$257	354 81 \$615	424 81 \$713
57 127 \$17	144 81 \$1911	215 81 \$121	285 81 \$259	355 81 \$617	425 81 \$715
58 127 \$19	145 81 \$1911	216 81 \$123	286 81 \$261	356 81 \$619	426 81 \$717
59 127 \$21	145 135 \$1355	217 81 \$125	287 81 \$263	357 81 \$621	427 81 \$719
60 127 \$23	145 409 \$831	218 81 \$127	288 81 \$265	358 81 \$627	428 81 \$721
61 219 \$1	146 81 \$1911	219 81 \$129	289 81 \$267	359 81 \$629	429 81 \$723
62 219 \$9	147 81 \$1899	220 81 \$131	290 81 \$271	360 81 \$623	430 81 \$725
63 219 \$7	148 81 \$1911	221 81 \$133	291 81 \$273	361 81 \$625	431 81 \$729
64 219 \$3	149 81 \$1911	222 81 \$135	292 81 \$275	362 81 \$631	433 81 \$781
65 219 \$5	150 81 \$1875	223 81 \$137	293 81 \$277	363 81 \$633	434 81 \$783
66 127 \$2	151 85 \$9	224 81 \$139	294 81 \$1881	364 81 \$635	435 81 \$795
67 127 \$195	152 85 \$11	225 81 \$141	295 8 1\$279	365 81 \$637	436 81 \$797
68 127 \$27	153 81 \$3	226 81 \$143-5	296 81 \$281	366 81 \$639	537 81 \$799
69 127 \$29	154 81 \$5	227 81 \$147	297 81 \$283	367 81 \$645	438 81 \$801
70 115 \$171	155 81 \$51	228 81 \$149	298 81 \$285	368 81 \$647	439 81 \$803
71 115 \$173	156 81 \$53	229 81 \$151	299 81 \$287	369 81 \$651	440 81 \$805
72 115 \$175	157 81 \$55	230 81 \$153	300 81 \$289	370 81 \$653	441 81 \$807
73 127 \$49	158 81 \$1385	231 81 \$155	301 81 \$291	371 81 \$655	442 81 \$787
73 127 \$51	159 81 \$63	232 81 \$157	302 81 \$293	372 81 \$657	443 81 \$789
75 127 \$43	160 81 \$67	233 81 \$159	303 81 \$295	373 81 \$659	444 81 \$791
76 127 \$47	161 81 \$69	234 81 \$161	304 81 \$297	374 81 \$661	445 81 \$811
77 127 \$53	162 81 \$65	235 81 \$163	305 81 \$299	375 81 \$663	446 81 \$816
78 127 \$55	163 81 \$71	236 81 \$165	306 81 \$301	376 81 \$665	447 81 \$820
81 127 \$57	164 81 \$73	237 81 \$167	307 81 \$303	377 81 \$667	448 81 \$793
82 81 \$149	165 81 \$75	238 81 \$169	308 81 \$305	378 81 \$773	449 81 \$795
83 131 \$1	166 81 \$77	239 171 \$267	309 81 \$195	379 81 \$775	450 81 \$812
85 131 \$3	167 81 \$79	240 81 \$1893	310 81 \$187	380 81 \$777	451 81 \$813

284 Cross References R&B to Pierce

452	81	\$814	529	81	\$863	607	81	\$1323	685	81	\$489	764	81	\$327	840	81	\$1455
453	81	\$815	530	223	\$3	608	81	\$1325	686	81	\$491	765	81	\$328	841	81	\$1457
454	81	\$817	531	223	\$5	609	81	\$1327	687	81	\$492	766	81	\$329	842	81	\$1459
455	81	\$819	532	223	\$7	610	81	\$1329	688	81	\$493	767	81	\$331	843	81	\$1461
456	81	\$818	533	223	\$9	611	81	\$1331	689	81	\$495	768	81	\$333	844	81	\$1463
457	263	\$11	534	223	\$11	612	81	\$1333	690	81	\$497	769	81	\$335	845	81	\$1465
458	81	\$821	535	223	\$13	613	81	\$957	691	81	\$499	770	81	\$337	846	81	\$1467
459	81	\$57	536	223	\$15	614	81	\$959	692	81	\$501	771	81	\$339	847	81	\$1469
460	81	\$59	537	223	\$17	615	81	\$961	693	81	\$503	772	81	\$341	848	81	\$1471
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1443 409 \$281	1521 409 \$439	1599 409 615	1677 409 \$793	1755 287 \$101	1848 287 \$233
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1469 409 \$333	1547 409 \$511	1625 409 \$689	1703 69 \$49	1780 287 \$201	1874 287 \$255

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					2377 135 \$249

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2379	135	\$253	2458	135	\$411	2538	135	\$569	2617	135	\$727	2696	135	\$885	3041	9	\$63
2380	135	\$255	2459	135	\$413	2539	135	\$571	2618	135	\$729	2697	73	\$1	3042	9	\$65
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2455	135	\$405	2534	135	\$563	2614	135	\$721	2693	135	\$879	3039	9	\$59	3117	231	\$97
2456	135	\$407	2535	135	\$565	2615	135	\$723	2694	135	\$881						

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3175 163 \$29	3257 135 \$1603	3335 41 \$51	3414 357 \$45	3491 357 \$201	3569 357 \$357
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3188 163 \$43	3270 163 \$101	3348 41 \$111	3427 357 \$71	3504 357 \$227	3582 357 \$385
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3198 135 \$1693	3280 163 \$115	3358 41 \$131	3437 357 \$91	3514 357 \$247	3592 541 \$27
3199 135 \$1695	3281 163 \$116	3359 41 \$133	3438 357 \$93	3515 357 \$249	3593 541 \$1
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3205 163 \$227	3285 135 \$1409	3363 357 \$379	3442 357 \$101	3519 357 \$257	3597 541 \$9
3206 163 \$229	3286 135 \$1411	3364 41 \$153	3443 357 \$103	3520 357 \$259	3598 541 \$11

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3616 405 \$213	3693 405 \$33	3766 405 \$417	3844 115 \$257	3926 115 \$127	4005 115 \$443
3617 405 \$215	3694 405 \$35	3766½ 405 \$419	3845 115 \$259	3927 115 \$129	4006 115 \$445
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3622 405 \$225	3699 405 \$125	3771 107 \$69	3850 115 \$271	3932 115 \$137	4011 115 \$335
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3626 405 \$233	3703 405 \$49	3775 107 \$85	3854 115 \$279	3936 179 \$1	4015 115 \$343
3627 405 \$235	3704 405 \$51	3776 107 \$89	3855 115 \$281	3937 115 \$481	4016 179 \$1
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3632 405 \$245	3708½ 405 \$61	3781 107 \$107	3860 167 \$169	3942 115 \$495	4021 115 \$353
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3636 405 \$253	3712 405 \$343	3786 107 \$125	3864 135 \$1341	3946 115 \$501	4025 115 \$361
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3638 405 \$257	3714 405 \$347	3788 107 \$135	3867 115 \$177	3948 115 \$499	4027 115 \$365
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3658 77 \$517	3730 405 \$379	3807 107 \$49	3889 115 \$189	3968 167 \$165	4046 115 \$35
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					4066 115 \$73

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7180 337 \$25	7260 33 \$147	7340 337 \$217	7420 345 \$49	7503 77 \$101	7650 77 \$255
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7183 337 \$31	7263 337 \$147	7343 337 \$223	7423 345 \$55	7506 77 \$107	7653 77 \$261
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7185 337 \$35	7265 337 \$147	7345 171 \$273	7425 345 \$59	7508 219 \$15	7655 77 \$265
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7191 337 \$47	7271 337 \$147	7351 345 \$1	7431 345 \$71	7516b 77 \$1107	7661 77 \$279
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7206 337 \$77	7287 337 \$147	7366 345 \$31	7446 77 \$123	7583 77 \$895	7676 77 \$303
7202 337 \$79	7288 337 \$147	7367 345 \$33	7447 77 \$125	7584 77 \$151	7677 77 \$305
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7212 337 \$89	7293 337 \$147	7373 345 \$111	7452 77 \$1151	7589 77 \$161	7682 77 \$315
7213 337 \$91	7294 337 \$147	7374 345 \$119	7453 77 \$1153	7590 77 \$163	7683 77 \$321
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7223 337 \$111	7304 337 \$147	7384 345 \$125	7467 77 \$581	7600 77 \$183	7693 77 \$343
7224 337 \$113	7305 337 \$147	7385 345 \$147	7468 77 \$583	7601 77 \$185	7694 77 \$345
7225 337 \$115	7306 337 \$147	7386 345 \$151	7469 77 \$585	7602 77 \$187	7695 77 \$347
7226 337 \$117	7307 337 \$147	7387 345 \$157	7470 77 \$587	7603 77 \$189	7696 77 \$349
7227 337 \$119	7308 337 \$147	7388 345 \$143	7471 77 \$589	7604 77 \$191	7696½ 77 \$351
7228 337 \$121	7309 337 \$147	7389 345 \$155	7472 77 \$591	7605 77 \$193	7697 77 \$353
7229 337 \$123	7310 337 \$147	7390 345 \$149	7473 77 \$593	7606 77 \$195	7698 77 \$355

298 Cross References R&B to Pierce

7699	77	\$357	7793	171	\$81	7877	7	\$1171	8045	421	\$77	8125	437	\$301	8253	393	\$27
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7701	77	\$361	7795	171	\$85	7878	77	\$1175	8047	421	\$81	8127	437	\$305	8255	393	\$31
7702	77	\$363	7796	171	\$87	7879	77	\$1177	8048	421	\$83	8128	437	\$307	8256	393	\$33
7703	77	\$325	7797	171	\$89	7880	77	\$1179	8049	421	\$85	8129	437	\$309	8257	393	\$35
7704	77	\$327	7798	171	\$91	7881	77	\$923	8050	421	\$87	8130	437	\$311	8258	393	\$37
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7722	77	\$371	7802	171	\$99	7887	77	\$931	8054	421	\$133	8134	437	\$319	8262	115	\$539
7723	77	\$373	7803	171	\$101	7888	77	\$933	8055	421	\$135	8135	437	\$321	8263	115	\$541
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7726	77	\$379	7806	171	\$107	7891	77	\$939	8058	421	\$119	8138	437	\$327	8266	116	\$547
7727	77	\$381	7807	171	\$109	7892	77	\$941	8059	421	\$121	8139	437	\$329	8267	115	\$549
7728	77	\$383	7808	171	\$111	7965	77	\$841	8060	421	\$123	8140	437	\$331	8268	115	\$551
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7731	77	\$389	7811	171	\$117	7968	77	\$847	8063	77	\$607	8143	437	\$337	8271	115	\$557
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7741	77	\$407	7821	171	\$141	7978	77	\$867	8073	77	\$627	8155	437	\$277	8281	115	\$577
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8412	147	\$1	8492	275	\$29	8590	489	\$53	8732	433	\$93	8811	435	\$11	8890	435	\$169

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8891	435	\$171	8982	127	\$113	9061	127	\$117	9138	501	\$89	9217	501	\$173	9297	501	\$367
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8981	127	\$111	9060	127	\$115	9137	501	\$88				9296	501	\$365	9378	505	\$115

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9391	505	§121	9427	139	§81	9450	77	§1225	9464	77	§1253	9478	77	§1281	9502	135	§1573
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9383	505	§125	9429	139	§85	9452	77	§1229	9466	77	§1257	9480	77	§1285	9505	405	§71
9384	505	§127	9439	77	§1203	9451	77	§1227	9467	77	§1259	9481	77	§1287	9506	171	§299
9385	505	§129	9440	77	§1205	9454	77	§1233	9468	77	§1261	9482	77	§1289	9507	171	§301
9386	505	§131	9441	77	§1207	9455	77	§1235	9469	77	§1263	9483	77	§1291	9508	171	§303
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9389	505	§137	9444	77	§1213	9458	77	§1241	9472	77	§1269	9486	77	§1297	9524	135	§1627
9390	505	§139	9445	77	§1215	9459	77	§1243	9473	77	§1271	9487	77	§1299	9525	135	§629
9391	505	§141	9446	77	§1217	9460	77	§1245	9474	77	§1273	9489	77	§1303			
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WRECKMASTER, 115 §535. See County Officers.

YAKIMA COUNTY. See Counties.